

1 Qman report that we discussed earlier, correct? 17:31:12
 2 A. Okay. 17:31:16
 3 Q. Do you recognize that as being -- 17:31:16
 4 A. I don't recognize that necessarily their 17:31:18
 5 idea of coverage is as messed up as their design 17:31:22
 6 test, but I don't know what they base that 316 17:31:26
 7 square feet on. 17:31:32
 8 MR. KOPEL: I'll ask the Court Reporter to 17:32:28
 9 please mark this document as Exhibit No. 16. 17:32:30
 10 (WHEREUPON, a certain document was 17:32:30
 11 marked Whitford Deposition Exhibit
 12 No. 16, for identification, as of
 13 01/12/2018.)
 14 BY MR. KOPEL:
 15 Q. Do you have Exhibit No. 16? 17:32:52
 16 A. I do. 17:32:54
 17 Q. Do you see that it is a printout from 17:32:56
 18 the Amazon website? 17:32:58
 19 A. I do. 17:33:00
 20 Q. Okay. And do you see that it features a 17:33:02
 21 product titled, "Ultrasonic Car Deer Warning 17:33:04
 22 Whistles?" 17:33:08
 23 A. I do. 17:33:08
 24 Q. And that's -- we discussed earlier that 17:33:10

Page 250

1 ultrasonic car deer warning whistles are 17:33:12
 2 ineffective, correct? 17:33:16
 3 A. Yes, we did. 17:33:18
 4 Q. Okay. Can you please turn to page 2? 17:33:18
 5 It appears that customer reviews gave this product 17:33:22
 6 3.4 out of 5 stars, do you see that? 17:33:26
 7 A. Yes, I do. 17:33:30
 8 Q. Does that change your opinion on the 17:33:32
 9 efficacy of the product? 17:33:34
 10 A. Not in the least. 17:33:34
 11 Q. Why not? 17:33:36
 12 A. Because I know the scientific 17:33:38
 13 limitations of that product, the hearing range of 17:33:38
 14 deer, the speeds of cars. Everything about it says 17:33:42
 15 that the perception is that this product is a good 17:33:46
 16 way to make sure you kill a deer with your car by 17:33:50
 17 driving faster than your headlights can cover. 17:33:54
 18 Q. So would you agree that reliance on 17:33:56
 19 Amazon reviews would not be a scientifically valid 17:34:00
 20 way to determine the efficacy of a product? 17:34:04
 21 MR. OSTOJIC: Object to form. 17:34:06
 22 BY THE WITNESS: 17:34:08
 23 A. Since this is the first Amazon review 17:34:08
 24 I've ever seen, I have hardly a basis to make that 17:34:12

Page 251

1 decision. 17:34:16
 2 BY MR. KOPEL: 17:34:16
 3 Q. Okay. But in this instance, it does not 17:34:16
 4 sway your decision, correct? 17:34:20
 5 A. No. 17:34:20
 6 Q. You can put that aside, please. 17:34:26
 7 A. The Pennsylvania State Police tested 17:34:46
 8 those devices on half their fleet for five years 17:34:48
 9 and came out with no difference. 17:34:50
 10 Q. I'm sorry, I didn't hear what you said. 17:34:54
 11 A. I said the Pennsylvania State Police 17:34:56
 12 tested those devices for five years on half of 17:34:58
 13 their fleet of squad cars, came out with no 17:35:00
 14 difference. 17:35:04
 15 Q. Can you please turn to your initial 17:35:08
 16 report that was Exhibit 1? There is a section 17:35:12
 17 on -- yeah, that's it, and there is a section on 17:35:38
 18 Debbie Feuerstein. Do you recall what section I'm 17:35:42
 19 referring to? 17:35:44
 20 A. Not right offhand. It's been a long 17:35:46
 21 day. 17:35:48
 22 Q. That's fine. 17:35:48
 23 A. Yes, here I am. 17:36:06
 24 Q. Okay. In the middle of this paragraph, 17:36:08

Page 252

1 it states the 2011 and 2014 rat and mice test did 17:36:12
 2 indicate efficacy for the UPRs and small scale 17:36:16
 3 limited spaces test protocols used, do you see 17:36:20
 4 that? 17:36:24
 5 A. Absolutely. 17:36:24
 6 Q. Okay. If you did not have the benefit 17:36:24
 7 of your Transonic Pro study, would you be able to 17:36:28
 8 conclude solely on the basis of these 2011 and 2014 17:36:36
 9 tests that the Bell & Howell repellers are 17:36:42
 10 efficacious outside of the small scale limited 17:36:48
 11 spaces that these test protocols used? 17:36:50
 12 MR. OSTOJIC: Object, incomplete hypothetical, 17:36:52
 13 but go ahead. 17:36:54
 14 BY THE WITNESS: 17:36:56
 15 A. All I could conclude is that they were 17:36:56
 16 highly efficacious in this small scale study. 17:37:00
 17 BY MR. KOPEL: 17:37:04
 18 Q. But not outside of that, correct? 17:37:04
 19 A. That would call for speculation, but I 17:37:06
 20 would expect it would go beyond that distance 17:37:10
 21 because I know the limits of the sound transfer. 17:37:14
 22 Q. But that's based on your Transonic Pro 17:37:16
 23 study, correct? 17:37:20
 24 A. The fact that the decibel levels of 17:37:20

Page 253

1 these and the frequencies are the same, I would 17:37:24
 2 fully expect that they have the reach of at least 17:37:24
 3 15 to 20 feet should be efficacious to that 17:37:28
 4 distance. 17:37:34
 5 Q. At the end of this paragraph, you state, 17:37:34
 6 "As a biologist and scientist, I would have to say 17:37:38
 7 that all these tests failed at the design level due 17:37:40
 8 to lack of understanding biology and behavior of 17:37:44
 9 the test animals and maximum density tolerated by 17:37:48
 10 these species in a test setting." Do you see that? 17:37:50
 11 A. Yes. 17:37:52
 12 Q. What are you referring to when you say 17:37:52
 13 all these tests? 17:37:54
 14 A. Just the 2016 tests. 17:37:56
 15 Q. Okay. So why did you write all these 17:37:58
 16 tests? 17:38:00
 17 A. Because there were multiple tests in 17:38:00
 18 2016. 17:38:02
 19 Q. You mean the -- you're referring to the 17:38:04
 20 rats -- 17:38:06
 21 A. The mice, the rats, the mixed animal 17:38:08
 22 tests. 17:38:10
 23 Q. Okay. Thanks for clearing that up. Was 17:38:10
 24 it appropriate for Dr. Potter to use cardboard 17:38:40

Page 254

1 harborage boxes in the mouse testing? 17:38:48
 2 A. Absolutely not. 17:38:52
 3 Q. Why not? 17:38:54
 4 A. Because three-tenths of a centimeter of 17:38:56
 5 cardboard reduces the sound force by 60 percent in 17:39:00
 6 the studies that were reported by Gould in 1984, 17:39:04
 7 and the cardboard boxes he used were from U-Haul 17:39:08
 8 meant for heavy materials, so they were at least 17:39:12
 9 three times that thickness, and it provided 17:39:16
 10 complete shelter from the sounds in the room where 17:39:20
 11 the repellers were. 17:39:22
 12 Q. So the mice inside those boxes were not 17:39:22
 13 able to detect the sounds at all, correct? 17:39:26
 14 A. Probably not. 17:39:30
 15 Q. Would you agree that mice have harborage 17:39:30
 16 spaces inside real world people's houses where 17:39:40
 17 ultrasound cannot reach? 17:39:46
 18 A. Yes. 17:39:48
 19 Q. Okay. So in that respect, would you 17:39:48
 20 agree that the use of harborage spaces in 17:39:50
 21 Dr. Potter's study mirrored the ability of mice to 17:39:54
 22 go into harborage spaces in real world houses? 17:39:58
 23 MR. OSTOJIC: Object, incomplete hypothetical, 17:40:02
 24 form, foundation, but go ahead. 17:40:04

Page 255

1 BY THE WITNESS: 17:40:08
 2 A. If what he was testing was the efficacy 17:40:08
 3 of the units, then having put up a barrier which 17:40:12
 4 was known to reduce the efficacy, the harborage 17:40:16
 5 boxes and the plastic units inside of it, seems to 17:40:20
 6 be contrary to finding out whether the units are 17:40:22
 7 efficacious. 17:40:22
 8 BY MR. KOPEL: 17:40:28
 9 Q. Well, what if you're trying to find out 17:40:28
 10 the units are efficacious in somebody's house where 17:40:30
 11 there are areas for mice to harbor in that the 17:40:32
 12 ultrasonic waves cannot reach? 17:40:40
 13 A. It's already been clearly stated that 17:40:40
 14 the ultrasound cannot penetrate walls and floors. 17:40:42
 15 Q. So if someone wanted to test whether or 17:40:50
 16 not these repellers would be effective at driving 17:41:06
 17 out mice inside of a house setting, wouldn't you 17:41:08
 18 agree that it would be proper to use harborage 17:41:12
 19 areas where -- to use harborage areas just as the 17:41:16
 20 mice would have in a real world setting? 17:41:22
 21 MR. OSTOJIC: Object, incomplete hypothetical 17:41:24
 22 and form, but go ahead. 17:41:26
 23 BY THE WITNESS: 17:41:40
 24 A. We're not really looking at a real world 17:41:40

Page 256

1 test here. 17:41:44
 2 BY MR. KOPEL: 17:41:46
 3 Q. I understand that's your opinion, but 17:41:46
 4 can you please focus on this question, and you can 17:41:48
 5 elaborate later, but did you understand the 17:41:52
 6 question clearly? 17:41:56
 7 A. I believe I did. You want to know 17:42:00
 8 whether it would be appropriate to have these there 17:42:02
 9 if you're trying to find out whether you can drive 17:42:04
 10 things out of the house. I'd still say you're 17:42:06
 11 creating a means to force habitation on the 17:42:18
 12 animals, but I would say no still. I just don't 17:42:22
 13 see that. 17:42:28
 14 Q. If mice have areas for harborage inside 17:42:34
 15 of houses, why would it be inappropriate to give 17:42:38
 16 them harborage areas inside of a test designed to 17:42:40
 17 see whether or not the repellers would work inside 17:42:44
 18 of the house? 17:42:46
 19 MR. OSTOJIC: Object, form, foundation, 17:42:46
 20 incomplete hypothetical, but go ahead. 17:42:48
 21 BY THE WITNESS: 17:42:52
 22 A. They can't hear the repellers inside 17:42:52
 23 that. 17:42:54
 24 BY MR. KOPEL: 17:42:56

Page 257

1 Q. And they can't hear it inside a crack in 17:42:56
 2 the floor in the house, correct? 17:42:58
 3 MR. OSTOJIC: Object. 17:43:00
 4 BY THE WITNESS: 17:43:02
 5 A. If they're under the floor, 17:43:02
 6 MR. OSTOJIC: Incomplete. 17:43:02
 7 BY MR. KOPEL: 17:43:02
 8 Q. Okay. So wouldn't you say that that's a 17:43:04
 9 parallel between this test and a real world house? 17:43:06
 10 A. It wouldn't come down to it. The whole 17:43:10
 11 test was so badly flawed it doesn't matter. 17:43:12
 12 Q. Can you please answer the question I 17:43:16
 13 asked? 17:43:18
 14 MR. OSTOJIC: Can you repeat the question? 17:43:18
 15 (WHEREUPON, the record was read 17:43:18
 16 as requested.) 17:43:20
 17 MR. OSTOJIC: Object to the form, incomplete 17:43:22
 18 hypothetical. 17:43:34
 19 BY THE WITNESS: 17:43:40
 20 A. Real world houses can have a place where 17:43:40
 21 mice can get out where they got in. I can't say 17:43:44
 22 that this is a good real world test with these 17:43:46
 23 things. 17:43:50
 24 BY MR. KOPEL: 17:43:56

Page 255

1 Q. I'm not referring to the ability of mice 17:43:56
 2 to escape. I'm referring to the fact that houses 17:44:00
 3 contain areas for harborage as did Dr. Potter's 17:44:02
 4 nest. Would you agree that houses contain areas 17:44:06
 5 for harborage just like Dr. Potter's nest did? 17:44:10
 6 A. Well, not every house does, but, yes, 17:44:14
 7 some do. 17:44:16
 8 Q. Some houses don't have a space that's 17:44:26
 9 beneath the floor? 17:44:30
 10 A. Some houses have concrete floors. 17:44:32
 11 Q. Okay. And some houses don't have spaces 17:44:34
 12 inside the walls? 17:44:38
 13 A. Some houses are thoroughly insulated. 17:44:38
 14 Q. Okay. If a mouse escaped -- okay, let's 17:44:42
 15 take a step back and set a foundation. Mr. Donohue 17:45:30
 16 conducted experiments with two sets of apartments; 17:45:34
 17 one set of apartment that contained repellers and 17:45:40
 18 one set of apartments that did not contain 17:45:42
 19 repellers, correct? 17:45:46
 20 A. Yeah, one triplet of apartments with, 17:45:46
 21 one triplet of apartments without, 17:45:50
 22 Q. Okay. If a mouse escaped from an 17:45:52
 23 apartment without -- if a mouse died in an 17:46:00
 24 apartment without, you wouldn't expect that death 17:46:04

Page 259

1 to have been as a result of starvation, correct? 17:46:06
 2 MR. OSTOJIC: Object, incomplete hypothetical. 17:46:12
 3 BY THE WITNESS: 17:46:16
 4 A. I wouldn't think it would be due to 17:46:16
 5 starvation, 17:46:18
 6 BY MR. KOPEL: 17:46:20
 7 Q. Okay. Is it normal in this sort of 17:46:20
 8 testing that you might find mice die during the 17:46:24
 9 course of the experiment? 17:46:28
 10 A. Some deaths but not the numbers that we 17:46:32
 11 saw and the distribution of where they were. Seven 17:46:36
 12 of nine were in test apartments, the back rooms of 17:46:40
 13 test apartments, only two in the front rooms. 17:46:44
 14 Q. What would be an acceptable number of 17:46:46
 15 deaths in an experiment such as this? 17:46:58
 16 MR. OSTOJIC: Object to form, foundation, 17:47:00
 17 incomplete hypothetical. 17:47:02
 18 BY THE WITNESS: 17:47:04
 19 A. Preferably none. 17:47:04
 20 BY MR. KOPEL: 17:47:04
 21 Q. Okay. But what number of deaths would 17:47:04
 22 you typically -- let me take a step back. It 17:47:08
 23 wouldn't be all that unusual to observe deaths 17:47:16
 24 under these circumstances, would it? 17:47:18

Page 260

1 MR. OSTOJIC: Same objections. 17:47:20
 2 BY THE WITNESS: 17:47:20
 3 A. It would be less expected if you put 17:47:20
 4 food in both the front and back rooms. 17:47:24
 5 BY MR. KOPEL: 17:47:26
 6 Q. Let's talk about the apartments without 17:47:26
 7 the repellents for a moment, okay? Even in an 17:47:30
 8 experiment such as this, it wouldn't be all that 17:47:32
 9 unusual to observe some deaths, correct? 17:47:34
 10 A. Or the escape of 15 mice which they had. 17:47:36
 11 Q. And that's not unusual, right, because 17:47:40
 12 mice can find a way to escape often despite best 17:47:42
 13 efforts; would you agree with that? 17:47:44
 14 A. Yes. 17:47:46
 15 Q. And if a mouse escaped in one of the 17:47:52
 16 apartments without a repeller, obviously that has 17:47:56
 17 nothing to do with the effects of the repeller, 17:48:00
 18 correct? 17:48:02
 19 MR. OSTOJIC: Object. 17:48:02
 20 BY THE WITNESS: 17:48:04
 21 A. Pretty clearly, yes. 17:48:04
 22 BY MR. KOPEL: 17:48:04
 23 Q. Sorry, sometimes I need to ask obvious 17:48:04
 24 questions for the record. And if a mouse -- if a 17:48:08

Page 261

1 mouse died in the front room of one of the 17:48:12
 2 apartments with a repeller, it is likely that that 17:48:16
 3 mouse did not die from starvation given that there 17:48:24
 4 was food there; would you agree with that? 17:48:26
 5 MR. OSTOJCIC: Incomplete hypothetical, but go 17:48:30
 6 ahead. 17:48:30
 7 BY THE WITNESS: 17:48:32
 8 A. Probably. 17:48:32
 9 BY MR. KOPEL: 17:48:40
 10 Q. Is it your contention that the mice 17:48:40
 11 could hear the ultrasonic sounds in the back room 17:48:44
 12 during these tests? 17:48:50
 13 A. At a level which would not be enough to 17:48:52
 14 be sensory -- disturb their sensory system, but 17:48:56
 15 it's doubtful that they didn't hear the low levels 17:49:00
 16 of the units. 17:49:04
 17 Q. What is the basis for that opinion? 17:49:16
 18 A. The fact that they would be audible to a 17:49:24
 19 mouse to at least 20, if not 25 feet, and with some 17:49:28
 20 reflection off of walls and so forth, it would be a 17:49:32
 21 low level, admittedly low decibel level in there, 17:49:36
 22 but they can hear even low levels. 17:49:40
 23 Q. Now, the door was only open by a very 17:49:44
 24 small crack, correct? 17:49:46

Page 262

1 A. That's true. That helps. 17:49:48
 2 Q. You're saying that the ultrasonic sound, 17:49:50
 3 which is very directional, correct, was able to 17:50:00
 4 bounce off, I guess -- 17:50:04
 5 A. Hard surfaces and walls. More 17:50:08
 6 importantly, the ones in the back room have been 17:50:12
 7 exposed to know where the sound is, and so they 17:50:16
 8 don't necessarily go into the area of the expeller 17:50:20
 9 in the front room. They can tell that it's still 17:50:24
 10 on. 17:50:32
 11 Q. I want to take things one step at a 17:50:38
 12 time, please. Now, when you talk about ultrasonic 17:50:40
 13 sound bouncing off of walls -- 17:51:06
 14 A. It reflects off hard surfaces, same way 17:51:14
 15 that echos come back from the rock faced half a 17:51:18
 16 mile away on the lower frequency sounds. But it 17:51:22
 17 doesn't mean that it extends farther when it does 17:51:28
 18 that. It just gets in places which are not 17:51:32
 19 directly in line with it. 17:51:34
 20 Q. What testing have you seen on this 17:51:36
 21 point? 17:51:40
 22 A. The most obvious to me is the fact that 17:51:44
 23 the sound units in the back hall in my farm house 17:51:48
 24 are just keeping mice away that are out of line 17:51:50

Page 263

1 with that speaker a good distance away below the 17:51:52
 2 level of the hallway down the steps. They're 17:51:58
 3 perceiving that. 17:52:00
 4 Q. Have you seen physical testing of the 17:52:02
 5 sound that shows that it bounces off of walls? 17:52:02
 6 A. Yes. It said that it reflects off of 17:52:06
 7 hard surfaces. Any sound will. 17:52:10
 8 Q. Can you please grab the Exhibit No. 3, 17:52:18
 9 and there is a chart here which lists the location 17:52:52
 10 of the mice day 1 through day 14, do you see that? 17:52:58
 11 That's the right page. 17:53:04
 12 A. Yes. 17:53:14
 13 Q. So you see what I'm referencing. 17:53:14
 14 correct? 17:53:16
 15 A. Yes. 17:53:16
 16 Q. Now, the mice were -- in both the 17:53:24
 17 treated group and the untreated group, they were 17:53:34
 18 kept in the front room for the pretest phase, 17:53:40
 19 correct? 17:53:44
 20 A. Correct, which invalidates the control 17:53:44
 21 function of the study. 17:53:50
 22 Q. Now, if you look at the untreated group, 17:53:50
 23 we can see that, at the end of day 1, 56 percent of 17:53:54
 24 the mice had gone into the back room, do you see 17:54:00

Page 264

1 that? 17:54:04
 2 A. Yes. 17:54:04
 3 Q. And that was despite having spent the 17:54:06
 4 pretest phase in the front room, correct? 17:54:08
 5 A. That would imply that the repellents are 17:54:12
 6 repelling the mice. 17:54:14
 7 Q. And, again, we're talking about the 17:54:16
 8 untreated group? 17:54:16
 9 A. Yes -- oh, the untreated group. 17:54:18
 10 Q. Yes. 17:54:20
 11 A. That's more or less random then. 17:54:20
 12 Treated group -- 17:54:24
 13 Q. So I'm sure you have a lot to say about 17:54:28
 14 other topics here, but I want to stay focused, 17:54:30
 15 please, on the distribution of mice in the 17:54:32
 16 untreated group for a moment, if you can please 17:54:34
 17 focus on that. 17:54:38
 18 A. Okay. 17:54:38
 19 Q. Now, in the untreated group, just like 17:54:38
 20 in the treated group, they were kept in the front 17:54:42
 21 room for the pretest phase, correct? 17:54:44
 22 A. Correct. 17:54:46
 23 Q. And then by the end of day 1, you're 17:54:46
 24 observing 58.8 percent of the mice in the back 17:54:50

Page 265

1 room, correct? 17:54:52
 2 A. For that one count period, yes. 17:54:54
 3 Q. And then the next day -- for the 17:54:56
 4 remainder of this study, you're seeing what is 17:55:02
 5 roughly -- I know the numbers fluctuate -- but what 17:55:06
 6 is roughly a 50/50 distribution, correct? 17:55:08
 7 A. Which is what you're expecting in an 17:55:12
 8 untreated group. 17:55:14
 9 Q. Despite the fact that they had spent the 17:55:14
 10 entire pretest phase in the front room, correct? 17:55:16
 11 A. If you notice as you go further down, 17:55:20
 12 the numbers in the back room diminish somewhat, but 17:55:26
 13 yeah. 17:55:28
 14 Q. So does it look -- based on these 17:55:30
 15 numbers, does it look to you like the mice in the 17:55:34
 16 untreated group were favoring the front room as a 17:55:38
 17 result of being there during the pretest phase? 17:55:42
 18 A. They were equally comfortable there. As 17:55:52
 19 with the back room, it's pretty much a 50/50 all 17:55:54
 20 the way down and across. 17:55:58
 21 Q. Despite the fact that they had spent the 17:56:00
 22 pretest phase in the front room, correct? 17:56:02
 23 A. Only if you count that the counts are 17:56:04
 24 valid all the way through. There is some evidence, 17:56:08

Page 266

1 when you get to looking at the data cards, that 17:56:10
 2 there were large numbers of mice not being counted 17:56:16
 3 throughout this. 17:56:18
 4 Q. Okay. So I'm happy to talk with you 17:56:20
 5 about that. Let's just first finish this one 17:56:24
 6 point. Based on the untreated group, it appears 17:56:26
 7 that the pretest phase did not cause these mice to 17:56:28
 8 favor the front room, correct? 17:56:32
 9 A. Not strongly except there are a couple 17:56:40
 10 of dates where there is 83, 60, 58 percent, but, 17:56:44
 11 no, nothing strongly suggestive of that. 17:56:50
 12 Q. I'm sorry, where do you see 83 percent? 17:56:54
 13 A. Percent difference. 17:57:04
 14 Q. Oh, you mean 8.3 percent difference? 17:57:06
 15 A. 83.3. 17:57:10
 16 Q. What day was that? 17:57:12
 17 A. Day 19, October 17th. 17:57:14
 18 Q. Are we on the same chart? October 17 17:57:18
 19 was day 6, right? 17:57:22
 20 A. Oh, wait, I'm looking at the back side 17:57:24
 21 of the number. 17:57:26
 22 19 October, 17, that's where I picked up 17:57:28
 23 the 17. 17:57:32
 24 Q. Are you referring to day 8? 17:57:34

Page 267

1 A. Yes. 17:57:36
 2 Q. Okay, I see what you're referring to 17:57:36
 3 here, okay. But that fluctuated back and forth, 17:57:40
 4 right? 17:57:42
 5 A. It did. 17:57:42
 6 Q. And in the untreated group, the food was 17:57:42
 7 only located in the front room; there was no food 17:57:58
 8 located in the back room, correct? 17:58:02
 9 A. That's true for both groups. 17:58:02
 10 Q. Right. Focusing on the untreated group, 17:58:04
 11 it did not appear that this caused the mice to 17:58:08
 12 favor the front room in the untreated group, 17:58:10
 13 correct? 17:58:14
 14 A. Again, once we get to the end of it, the 17:58:18
 15 numbers stack up a little bit on that side, but no. 17:58:22
 16 Q. Now, if you were looking inside of an 17:59:04
 17 apartment trying to locate 12 mice, would you agree 17:59:08
 18 that -- without disturbing the mice, without being 17:59:16
 19 too invasive, would you agree that it might 17:59:22
 20 sometimes be difficult to account for all of them? 17:59:24
 21 A. Let me put it this way: Those 17:59:26
 22 apartments were devoid of furniture, had carpeted 17:59:28
 23 floors, had barriers built up of masonry board all 17:59:32
 24 around the outside to limit their movement, to 17:59:36

Page 268

1 force them to stay within those areas. There was 17:59:40
 2 nothing for them to hide under other than the 17:59:42
 3 harborages, and part of the test count was to lift 17:59:46
 4 up the harorage, open up -- lift up the cardboard 17:59:48
 5 box, open the top of it, and count the mice inside 17:59:52
 6 the box. 17:59:56
 7 Q. Are you sure about that? 17:59:56
 8 A. Yes, because they give counts of the 17:59:56
 9 number of mice inside the box. 17:59:58
 10 Q. I think there was comments, weren't 18:00:00
 11 there? I don't think -- do you have a source for 18:00:04
 12 your -- 18:00:06
 13 A. Here's the tests, the data sheets. 18:00:06
 14 Q. Do you have a source for your statement 18:00:08
 15 that they lifted the boxes at any point? 18:00:10
 16 A. I watched the videos. 18:00:12
 17 Q. You saw them lifting the boxes? 18:00:14
 18 A. I saw them lift the box off, take the 18:00:16
 19 plastic cover off the harborages. That's the only 18:00:18
 20 way they could count the mice that were in there. 18:00:22
 21 Now the question is since you have two 18:00:24
 22 boxes and you checked both of those, where in that 18:00:24
 23 apartment are the missing mice when you have 18:00:28
 24 nothing but carpet and bare floors and barriers? 18:00:32

Page 269

68 (Pages 266 - 269)

1 It's not like this was my daughter's bedroom when 18:00:36
 2 she was 14 and you had clothes all over the place 18:00:38
 3 and blankets on the floor and debris. There is 18:00:42
 4 nothing to hide a mouse in, in theory, in these 18:00:46
 5 apartments. 18:00:48
 6 So the fact that they claim that they 18:00:50
 7 weren't disturbing the mice, well, if you lift the 18:00:56
 8 barbed wire box and the box and barbed wire lid off 18:01:00
 9 every time, you've done all the disturbing of mice 18:01:04
 10 that you reasonably can, and any attempt to say 18:01:06
 11 that we couldn't find them because we didn't 18:01:08
 12 disturb them in this barren landscape is purely an 18:01:12
 13 attempt to cover the fact they don't know where the 18:01:16
 14 hell those mice are. The counts don't add up. 18:01:18
 15 Q. Which video are you referring to? 18:01:42
 16 A. The whole dang thing that I was given 18:01:46
 17 which shot 15 seconds every minute for the first 18:01:48
 18 few days, 15 seconds every three minutes for the 18:01:52
 19 second or third day -- third or fourth days, 18:01:56
 20 15 seconds of video of the apartments. It was on a 18:02:00
 21 flash drive that I received of all the video that 18:02:02
 22 was taken. 18:02:06
 23 They only videoed to the 16th day and 18:02:06
 24 then they went to still photographs. That all of it 18:02:10

Page 270

1 goes to obfuscate the fact that they aren't 18:02:12
 2 accounting for 50 -- or 45 percent of the total 18:02:16
 3 number of mice on most counts, especially towards 18:02:18
 4 the end of the tests. It's so badly conducted in 18:02:22
 5 terms of consistency of counts and acknowledging 18:02:28
 6 where mice are and aren't that the conclusions of 18:02:32
 7 the test are heavily flawed. 18:02:38
 8 At the end of the test, they dismantle 18:02:40
 9 the apparatus, and they find in excess of 18 mice 18:02:44
 10 that were behind the barriers primarily in the 18:02:46
 11 rooms with the expellers, the back rooms of the 18:02:52
 12 treated apartments. They don't mention that, 18:02:56
 13 Q. Hold on. They find 18 mice? 18:03:00
 14 A. That are not in any of the rooms. 18:03:04
 15 Q. That escaped? 18:03:06
 16 A. That escaped. 18:03:08
 17 Q. Okay. And are you counting -- hold on. 18:03:08
 18 So are you counting all the apartments right now? 18:03:12
 19 A. Yes. 18:03:16
 20 Q. Okay. So that's including the untreated 18:03:16
 21 apartments, right? 18:03:18
 22 A. Yes. 18:03:20
 23 Q. Have you compared the number that 18:03:22
 24 escaped in the untreated apartments versus the ones 18:03:22

Page 271

1 that escaped in the treated apartments? 18:03:26
 2 A. Let's say that they were counting zero 18:03:28
 3 in some of the untreated apartments at one day and 18:03:30
 4 then two or three the next. But when they tore 18:03:34
 5 down the barriers, they had 12 mice in T102, they 18:03:36
 6 had five mice I think in B104. Those numbers are 18:03:44
 7 given not in these data sheets but in the 18:03:48
 8 follow-up -- okay, the final mouse counts here 18:04:00
 9 on -- 18:04:04
 10 Q. Yeah, I'm looking at the same page, go 18:04:04
 11 ahead. 18:04:08
 12 A. Okay. So these are the final mouse 18:04:08
 13 counts of the apartments both -- T102 -- 18:04:10
 14 Q. 205, let's go from the top. 205 is a 18:04:18
 15 control apartment, right? 18:04:20
 16 A. Control apartment. 18:04:22
 17 Q. And there that's where many of them 18:04:22
 18 escaped, correct? 18:04:24
 19 A. But that's not where they found them. 18:04:26
 20 When they tore things down and discovered mice dead 18:04:28
 21 and alive, they discovered three behind the barrier 18:04:34
 22 spaces there, 12 -- 18:04:36
 23 Q. Hold on, hold on. I think there is a 18:04:40
 24 disconnect. You think that these numbers are mice 18:04:42

Page 272

1 they found behind the barrier spaces or in the 18:04:44
 2 apartment in general after they took everything 18:04:48
 3 apart? 18:04:50
 4 A. This is when they disassembled these six 18:04:52
 5 apartments -- 18:04:56
 6 Q. This was the total number of mice they 18:04:56
 7 were able to find -- 18:04:56
 8 MR. OSTOICH: Let him finish. Don't talk over 18:04:56
 9 each other. 18:05:00
 10 BY MR. KOFFI: 18:05:00
 11 Q. Sorry. Go on. 18:05:00
 12 A. This is the total of mice discovered, 18:05:02
 13 and then you contrast this with what they were 18:05:04
 14 actually reporting from those apartments for those 18:05:06
 15 days, absolutely none in the last day -- excuse me, 18:05:08
 16 that's the first day. We have to go back through 18:05:14
 17 these in a different direction. 18:05:16
 18 Q. So if we look at the first -- 18:05:16
 19 A. No, this was the last day. They 18:05:18
 20 record -- for the three apartments that were 18:05:22
 21 treated apartments, they record two mice total in 18:05:24
 22 those three apartments on the last day of the 18:05:28
 23 study, October 26th of '17. 18:05:34
 24 Q. You're going to have to tell me what 18:05:34

Page 273

1 page you're looking at. 18:05:38
 2 A. It's not numbered. 18:05:38
 3 Q. October what? 18:05:40
 4 A. October 25th. 18:05:40
 5 Q. 2017? 18:05:42
 6 A. 2017. 18:05:44
 7 Q. Are you looking at 4:15 p.m.? 18:05:44
 8 A. Yes, I am. 18:05:46
 9 Q. Okay. What did you say? 18:05:48
 10 A. You see the number of mice that they're 18:05:50
 11 finding? 18:05:54
 12 Q. Yes. 18:05:54
 13 A. In the back room, very few. You look at 18:05:54
 14 the total number of mice going down in the study 18:05:58
 15 and across, you have four and eight mice -- excuse 18:06:08
 16 me, five and eight, so 13 total mice counted, and 18:06:18
 17 yet if you take those same three apartments, we 18:06:22
 18 show 30 mice. 18:06:28
 19 Q. Do you see that there are boxes listed 18:06:30
 20 here, Box 1? 18:06:34
 21 A. Yes, those are -- 18:06:36
 22 Q. Do you understand that those are counts 18:06:38
 23 of how many were in the boxes? 18:06:38
 24 A. Yes. 18:06:40

Page 274

1 Q. Okay. So you understand that there were 18:06:40
 2 spaces other than boxes in those apartments? 18:06:42
 3 A. There were places where the mice could 18:06:44
 4 hide which they weren't being found including those 18:06:48
 5 areas as it says here. These are the number of 18:06:50
 6 mice on this chart that were found behind the 18:06:52
 7 barriers when it was taken down. 18:06:56
 8 MR. KOPPEL: Okay. Let's take a break, please. 18:06:58
 9 THE VIDEOGRAPHER: We're off the record at 18:07:04
 10 6:00 o'clock p.m. 18:07:04
 11 (WHEREUPON, a short break was had.) 18:12:44
 12 THE VIDEOGRAPHER: We're back on the record at 18:12:44
 13 6:06 p.m. 18:12:54
 14 BY MR. KOPPEL: 18:12:54
 15 Q. The notes that you have brought today, 18:12:56
 16 when did you prepare those? 18:13:00
 17 A. Last night. 18:13:02
 18 Q. By yourself? 18:13:04
 19 A. Yes. 18:13:04
 20 Q. Okay. I'm going to make a formal 18:13:06
 21 request for production of those notes. 18:13:08
 22 Dr. Whitford, thank you for your time. 18:13:10
 23 That's all I've got subject to if something comes 18:13:12
 24 up on Redirect. 18:13:16

Page 275

1 CROSS EXAMINATION 18:13:18
 2 BY MR. OSTOJIC: 18:13:18
 3 Q. Dr. Whitford, let me show you what was 18:13:26
 4 previously marked as Whitford Deposition Exhibit 18:13:26
 5 No. 14 and in particular the page number Feuerstein 18:13:30
 6 91 to see if it refreshes your recollection as to 18:13:34
 7 whether tests done by Interlek in 2016 documented 18:13:38
 8 any rats that were -- that died and that were 18:13:42
 9 replaced and in particular the bottom two rows? 18:13:46
 10 A. Yes, I missed them. I was looking for 18:13:56
 11 something below that. Quantity of dead and add is 18:13:58
 12 acknowledged so that the Lins at least are carrying 18:14:04
 13 out the necessary divulging of information. 18:14:08
 14 Q. So the 2016 tests did indicate where 18:14:12
 15 rats had died and were replaced, correct? 18:14:16
 16 A. Yes. 18:14:18
 17 Q. And there was nothing in the 2011 and 18:14:18
 18 2014 tests results that showed any mortality with 18:14:20
 19 respect to the rats, true? 18:14:26
 20 A. Correct. 18:14:26
 21 Q. Sir, is it your opinion that the 18:14:26
 22 Bell & Howell devices which are the subject matter 18:14:28
 23 of this lawsuit are effective in repelling and 18:14:32
 24 driving out rodents in the area covered by the 18:14:34

Page 276

1 ultrasonic sounds of those devices, true? 18:14:38
 2 A. Absolutely. 18:14:38
 3 Q. Sir, is it your opinion that it was 18:14:40
 4 reasonable for Bell & Howell to rely upon the tests 18:14:42
 5 done in 2011 and 2014 which you reviewed in this 18:14:44
 6 case to state that their devices are ultrasonic 18:14:48
 7 pest repellants? 18:14:52
 8 A. Yes. 18:14:52
 9 Q. Sir, is it your opinion that it was 18:14:54
 10 reasonable for Bell & Howell to rely upon the 2011, 18:14:54
 11 2014 tests which were conducted on the devices that 18:14:58
 12 you reviewed to claim that the Bell & Howell 18:15:02
 13 devices will repel and drive rodents out of the 18:15:04
 14 areas covered by those devices? 18:15:08
 15 A. Yes. 18:15:10
 16 MR. OSTOJIC: Thank you, sir, I don't have any 18:15:10
 17 other questions. 18:15:12
 18 MR. KOPPEL: I've got nothing. Thank you. 18:15:14
 19 THE VIDEOGRAPHER: We are off the record at 18:15:16
 20 6:08 p.m. 18:15:18
 21 MR. OSTOJIC: We'll reserve. If it's ordered. 18:15:20
 22 you can just provide it to me. 18:15:40
 23 FURTHER DEPOSITION SAITH NOT.
 24

Page 277

1 I, GAIL LIVIGNI, CSR No. 84-1965, a
 2 Notary Public within and for the County of Will,
 3 State of Illinois, and a Certified Shorthand
 4 Reporter of said state, do hereby certify:
 5 That previous to the commencement of the
 6 examination of the witness, the witness was duly
 7 sworn to testify the whole truth concerning the
 8 matters herein;
 9 That the foregoing deposition transcript
 10 was reported stenographically by me, was thereafter
 11 reduced to typewriting under my personal direction
 12 and constitutes a true record of the testimony
 13 given and the proceedings had;
 14 That the said deposition was taken
 15 before me at the time and place specified;
 16 That I am not a relative or employee or
 17 attorney or counsel, nor a relative or employee of
 18 such attorney or counsel for any of the parties
 19 hereto, nor interested directly or indirectly in
 20 the outcome of this action.
 21 IN WITNESS WHEREOF, I do hereunto set my
 22 hand of office at Chicago, Illinois, this 17th day
 23 of January, 2018.
 24 *Gail Livigni*
 GAIL LIVIGNI, CSR No. 84-1965

Page 278

1 DEPOSITION ERRATA SHEET
 2 DECLARATION UNDER PENALTY OF PERJURY
 3 I declare under penalty of perjury that I
 4 have read the entire transcript of my deposition
 5 taken in the above-captioned matter or the same has
 6 been read to me and the same is true and accurate,
 7 save and except for changes and/or corrections, if
 8 any, as indicated by me on the DEPOSITION ERRATA
 9 SHEET hereof, with the understanding that I offer
 10 these changes as if still under oath. Signed on
 11 the _____ day of _____, 20____
 12 _____
 13 _____
 14 PHILIP WHITFORD, Ph.D.

Page 280

| | | |
|----|------------------------|-------------|
| 1 | INDEX | |
| 2 | WITNESS | EXAMINATION |
| 3 | PHILIP WHITFORD, Ph.D. | |
| 4 | Direct by Mr. Kopel | 4-275 |
| 5 | Cross by Mr. Ostojic | 276-277 |
| 6 | | |
| 7 | EXHIBITS | |
| 8 | NUMBER | PAGE |
| 9 | Whitford Exhibit 1 | 8 |
| 10 | Whitford Exhibit 2 | 8 |
| 11 | Whitford Exhibit 3 | 52 |
| 12 | Whitford Exhibit 4 | 52 |
| 13 | Whitford Exhibit 5 | 131 |
| 14 | Whitford Exhibit 6 | 140 |
| 15 | Whitford Exhibit 7 | 148 |
| 16 | Whitford Exhibit 8 | 152 |
| 17 | Whitford Exhibit 9 | 161 |
| 18 | Whitford Exhibit 10 | 164 |
| 19 | Whitford Exhibit 11 | 172 |
| 20 | Whitford Exhibit 12 | 175 |
| 21 | Whitford Exhibit 13 | 184 |
| 22 | Whitford Exhibit 14 | 195 |
| 23 | Whitford Exhibit 15 | 248 |
| 24 | Whitford Exhibit 16 | 250 |

Page 279

71 (Pages 278 - 280)

[& - 1987]

| & | 04804 1:9 3:13 | 120 80:18 165:6 | 273:23 |
|---|---|--|--|
| & 1:10 2:2,10 3:6 3:18 11:21 12:1 12:19 13:13 29:4 30:6 32:11 33:15 33:17 42:20 43:7 44:23 47:2,7 50:10,11,12,14 51:14 55:10,16 56:5,18 57:10,15 57:17 62:1,11,12 105:21 110:11,23 113:2 114:16,21 114:24 123:7 129:16 137:3 144:21 145:9 152:10 171:24 173:24 174:13,15 176:17 183:15 185:15,16,17 187:9,14,24 188:6 200:22 201:14 219:16,24 222:6 222:20 225:3 226:3,15 229:7 230:1 243:8,19 245:1 246:20 253:9 276:22 277:4,10,12 | I 1 1:24 8:11,15,18 11:3 14:10,14,16 14:18 15:5,9,13,17 25:11,14 29:1 32:9 35:22 43:4 45:7 58:6 72:18 72:23 75:3 76:2 80:10 93:19 104:8 118:14 147:9,10 147:12 206:23 221:1 252:16 264:10,23 265:23 274:20 279:9 1,500 137:13 1,600 185:5 10 87:19 164:2,6 169:11 174:24 181:15,17 249:14 279:18 100 15:11 171:3 181:16 184:4 185:5,6 212:11 10019 2:4 11 48:22 49:1,23 103:7 141:3,4 172:19,24 173:10 279:19 1100 1:19 2:11 111 180:13 11:25 72:21 11:3 72:18 12 3:3 74:20,21 138:10,18 165:1,3 165:4,4 170:19 171:15,16,16,16 175:18,22 178:10 178:14,19 232:11 232:17,18 268:17 272:5,22 279:20 | 171:18 12:23 118:2 12th 1:20 13 184:8,12 198:10 198:11 235:11,12 274:16 279:21 131 279:13 14 112:11 113:6 133:12 141:8 195:16,19,22 228:24 232:19 233:18 236:22 248:24 264:10 270:2 276:5 279:22 140 165:7 171:15 279:14 140,000 46:12 148 279:15 15 117:6 141:8 154:9,9 244:1 248:10,14,17 254:3 261:10 270:17,18,20 279:23 150 80:18 246:14 152 279:16 16 112:11 113:6 132:20 134:10 138:18 141:22 165:4 171:16 217:14 237:12 250:9,12,15 279:24 160 162:20 161 279:17 164 279:18 16th 270:23 17 132:20 171:21 267:18,22,23 | 172 279:19 175 176:13,16,21 243:14 244:20 245:4,20,23 246:6 247:15 279:20 17th 267:17 278:19 18 18:15,16 19:7 179:15 237:12 271:9,13 184 279:21 19 18:15 165:2 171:15 185:11 237:14,14 267:17 267:22 1940's 246:13 1940s 111:3 195 279:22 1950 170:3 1950's 166:9 246:13 1954 102:18 196 173:19 176:9 1960 87:9 186:17 1962 166:10 1964 170:3 1965 189:4 1967 184:22 1970 186:17 1979 77:12 1980 186:17 1980s 88:1 1982 25:2 1984 69:7,7 152:3 152:17 153:7,8,9 157:20 181:22 255:6 1985 101:21 1987 152:4 |
| 0 006356 248:11 01/12/2018 8:16 52:18 131:16 140:4 148:18 152:21 161:11 164:7 173:1 175:23 184:13 195:20 248:15 250:13 | | | |

[1990 - 50/50]

| | | | |
|--------------------|--------------------|--------------------|--------------------|
| 1990 158:7 168:9 | 87:1 88:8,11,12,14 | 23 134:12 | 33 1:19 2:11 3:6 |
| 1995 185:3 | 88:18 89:21,21 | 24 26:22 | 35 77:4 87:10 |
| 1999 77:2 | 90:4,18 91:5,5 | 248 279:23 | 360 57:6 |
| 1:14 118:5 | 92:2 94:21 97:16 | 25 87:10 165:6 | 368-4554 2:13 |
| 1:15 1:9 3:13 | 98:12 199:22 | 171:18 180:20 | 3:34 186:23 |
| 1:56 150:5 | 233:7 | 262:19 | 3:46 187:3 |
| 2 | 2011 32:14 34:11 | 25,000 60:3 | 4 |
| 2 8:12,15 9:12,14 | 62:12 187:11 | 250 279:24 | 4 52:13,17 53:6 |
| 11:10 15:7,21 | 190:9,19,20 197:5 | 2569 205:1,2 | 58:5,5 97:19,22 |
| 32:9 42:24 45:5 | 233:7,18 236:3,6 | 25th 274:4 | 144:6,21 150:8 |
| 48:23 72:21 74:11 | 253:1,8 276:17 | 264 171:6 | 171:13 218:13 |
| 74:17,20 75:4 | 277:5,10 | 266 162:6 | 228:1,1 279:12 |
| 80:10 89:19 90:3 | 2013 249:1 | 26th 273:23 | 4-275 279:4 |
| 93:19 150:11 | 2014 32:14 34:11 | 27 171:21 | 4.5 154:4,4,16,16 |
| 162:11 206:23 | 62:12 187:11 | 276-277 279:5 | 154:22,22 155:5,5 |
| 207:2 228:1 251:4 | 190:9,19,20 | 28 16:5 | 155:15,15 |
| 279:10 | 191:18 197:5 | 280 1:24 | 40 88:5 159:3 |
| 2,300 60:5 | 198:14 199:3,23 | 2:01 150:8 | 169:11 181:18 |
| 20 33:16 43:5 63:9 | 233:8 235:6,7,10 | 2:13 158:15 | 400 116:9 |
| 133:1 162:20 | 235:11 236:3,6 | 2:32 158:18 | 42 156:11 |
| 169:11 170:13,16 | 239:9 253:1,8 | 3 | 43 198:16,19,20,22 |
| 170:17 171:3 | 276:18 277:5,11 | 3 23:1 52:13,17,20 | 198:23 |
| 179:15,16 189:9 | 2016 175:13 | 53:16 58:5 69:10 | 43.8 215:13,15 |
| 237:10,14,14 | 187:12 188:23 | 69:13 134:22 | 45 63:7 183:21 |
| 242:18 244:1 | 189:13 190:14,16 | 140:15 143:19 | 271:2 |
| 254:3 262:19 | 190:18,22,23 | 144:1,2,6,9 153:21 | 45,000 43:10 60:10 |
| 280:11 | 196:3 232:11,19 | 206:23 247:8,9,9 | 61:11 63:7 185:10 |
| 20,000 43:5,9,17 | 233:6,22 234:19 | 264:8 279:11 | 450 137:22 |
| 44:15 61:10 63:8 | 236:2,9,10,14,17 | 3.4 251:6 | 48 171:14 |
| 66:19 185:10,10 | 237:4,24 238:18 | 3.5 154:13 | 4:15 274:7 |
| 200 116:10 | 240:11 254:14,18 | 30 88:5 101:11 | 5 |
| 2009 74:12,14 75:8 | 276:7,14 | 159:3 169:11 | 5 74:12 104:10 |
| 75:12 86:11,16,23 | 2017 274:5,6 | 274:18 | 131:11,15,18 |
| 87:1,4,6,14 89:21 | 2018 1:21 3:3 | 300 116:9 | 144:6,12,12 251:6 |
| 89:22 90:3,11,18 | 278:20 | 31 179:1 180:13 | 279:13 |
| 90:19,23 91:3,5,13 | 205 272:14,14 | 312 2:13 | 50 17:1 169:13 |
| 91:22 92:7 94:21 | 21,000 43:17 44:15 | 316 250:6 | 181:4 202:14 |
| 94:21,22 97:16 | 162:23 | 318 249:22 | 271:2 |
| 98:12 | 22,000 60:11 | 32 16:6 86:14 90:7 | 50/50 266:6,19 |
| 2010 74:12,14 75:9 | 22.5 181:1 | 189:9 227:7 | |
| 75:12 86:9,13 | | | |

[52 - acknowledging]

| | | | |
|--------------------|-------------------|--------------------|--------------------|
| 52 279:11,12 | 279:15 | 97.6 21:2 | absorb 68:8,13 |
| 53 138:7,8 | 7,000 203:6 244:5 | 98 181:19 | 69:21 70:20 |
| 53528 4:22 | 71 157:12 | 99 168:9 181:18,20 | absorbed 113:17 |
| 5491 4:20 | 73 157:10 | 9:30 1:21 | absorptions 71:4 |
| 55 199:8,17 231:14 | 74 157:12 | 9:41 3:4 | abstract 74:3 75:5 |
| 235:13,15 | 76 141:22 | 9:47 249:1,4,5 | 75:7,13,19 76:5,10 |
| 56 132:14,19 | 77 140:14 141:8 | a | 76:11,12,13,14 |
| 134:10 | 79 181:18 | a.d. 1:21 | 93:16 167:17,18 |
| 57 133:10,12 | 7th 198:14 | a.m. 1:21 3:4 | 167:20 176:7 |
| 134:21 | 8 | 72:18,21 249:1,5 | 182:13 |
| 58 231:15 264:23 | 8 43:21 87:18 | ability 255:21 | abstracts 166:3 |
| 267:10 | 152:17,20,23 | 259:1 | academia 17:15 |
| 58.8 265:24 | 158:22 267:24 | able 7:12 20:18 | 18:7 |
| 59 134:2 180:6,24 | 279:9,10,16 | 28:22 37:3 72:6 | accept 49:12 |
| 181:7,18 205:8,8 | 8,000 46:18 203:6 | 90:11 104:16,20 | 169:10 |
| 5:00 243:2 | 8.3 267:14 | 106:20,22 110:18 | acceptable 159:5 |
| 5:14 243:5 | 83 267:10,12 | 110:21 114:4,15 | 260:14 |
| 5th 90:5,6 | 83.3. 267:15 | 117:11 124:15 | accepted 27:9 |
| 6 | 83.4 215:12,16 | 125:1 129:12 | 169:7 |
| 6 139:21 140:3,7 | 837-7127 2:5 | 141:13 156:24 | access 17:23 |
| 144:6 165:1,3,3 | 84-1965 1:17 2:24 | 165:19 182:21 | 106:15 129:10 |
| 170:19 171:15,16 | 278:1,24 | 230:20 253:7 | 155:20 156:9,11 |
| 171:16 267:19 | 888 2:3 | 255:13 263:3 | 156:22 203:10 |
| 279:14 | 89 179:21 180:23 | 273:7 | accessed 156:1 |
| 60 69:12,13 134:2 | 181:18 182:3 | abnormal 82:16 | 157:19 |
| 169:13 255:5 | 9 | aboard 28:15 | accessible 156:4 |
| 267:10 | 9 161:7,10,13,20 | absence 35:18,19 | accidentally 64:18 |
| 60603 2:12 | 163:10,13 165:1,3 | 106:13 114:7 | account 82:7 |
| 62 171:19 | 165:3 170:19 | 193:6 244:17 | 268:20 |
| 63 138:17 | 171:15,16,16 | absolute 66:21 | accounting 271:2 |
| 646 2:5 | 279:17 | absolutely 7:10 | accurate 13:21 |
| 68 158:2 | 90 168:11 171:3 | 9:17 13:19 23:11 | 192:6 280:6 |
| 69 171:24 181:18 | 181:16,17 196:9 | 27:7 29:7 31:17 | accurately 8:6 |
| 232:16 | 91 276:6 | 31:19 53:9 61:1 | 50:20 58:7 152:13 |
| 6:00 275:10 | 92 232:14,14,23 | 81:10 88:3 92:10 | accuse 241:17 |
| 6:06 275:13 | 233:1 | 102:22 133:24 | acknowledge |
| 6:08 277:20 | 95 56:14 168:11 | 136:11 160:7 | 68:10 |
| 7 | 96 104:10 | 169:5 170:2 | acknowledged |
| 7 148:14,17,21 | 97 20:22 | 189:18 222:3 | 30:6 276:12 |
| 179:2 247:21 | | 229:1 253:5 255:2 | acknowledging |
| | | 273:15 277:2 | 271:5 |

[acrylic - animals]

| | | | |
|--|--|---|--|
| acrylic 204:5 242:18 | adequately 178:15 | 96:18 99:22 117:5 | allows 66:3 81:7 81:24 |
| action 5:7 81:14 278:17 | admits 213:14 | 122:8,21 123:11 | alter 178:19 221:3 |
| actions 21:7 | admittedly 262:21 | 124:5 126:15 | alternating 98:22 |
| active 197:24 214:23 | admitting 68:4 | 127:15 129:1,19 | alternation 59:17 |
| actively 217:6 218:3 | adverse 190:11 | 142:11 154:19 | alternative 78:9 |
| activities 197:20 | adversive 24:4 | 157:5 158:24 | alternatives 162:1 |
| activity 174:10 210:21 214:3,6 | advertised 120:14 | 177:9 181:10 | amanda 1:4 |
| actual 10:15 11:15 71:11 73:13 75:17 | advising 105:11 | 183:8 195:2 204:8 | amazon 250:18 251:19,23 |
| 94:10 190:3 206:8 245:21 | advocated 77:12 | 211:24 212:7 | amended 25:12,18 35:23 |
| adapt 40:20 80:3 | affect 78:23 82:11 85:1,4,15,21 86:4 | 216:20 217:22 | american 27:1 246:4,6 |
| adapted 38:12 | 95:21 128:17 | 219:12 222:23 | amount 86:8,10 154:8 179:23 |
| adapting 38:6 | afternoon 118:7,8 | 224:21 225:9 | amounts 184:1 |
| add 65:17 90:10 158:21 163:12 | age 185:2 | 227:18 230:13 | amplitude 33:14 49:17 54:11 57:18 68:16 |
| 174:5 270:14 276:11 | agency 17:18 | 233:15 241:4 | amplitudes 50:8 |
| added 62:2 65:22 237:13 | aggression 190:8 | 243:12 245:7 | analogy 78:24 |
| addicted 102:5 | aging 17:18,20,22 | 253:13 255:24 | analysis 205:16 |
| adding 220:5 | ago 55:24 115:3 166:1 169:11 | 256:22 257:20 | analyze 167:12 |
| addition 44:24 151:9 | 249:15 | 262:6 272:11 | analyzed 168:9 |
| address 4:18,23,24 10:16 12:12 18:5 | agonistic 190:11 217:1 | aimed 231:4 | analyzing 18:3 |
| 185:17 220:18 | agree 12:24 13:16 22:5 29:2 31:15 | air 112:13 168:16 | anecdotal 36:18 |
| addressed 60:18 150:21 | 57:7,12 65:4 66:9 | aircraft 20:17,20 | angle 177:14,16,18 |
| addresses 150:22 | 66:11 67:18 99:3 | airplane 100:17 101:2 | animal 16:7 17:10 17:12 39:3 40:14 |
| adds 239:14 | 110:4 175:2 | airplanes 100:21 101:5 102:22 | 42:7 46:2 60:2,7 |
| adequate 26:18,19 30:19 118:10 | 193:23 194:19 | airport 20:15,15 20:24 21:4 | 78:17 117:9 210:6 220:24 221:2 236:8 254:21 |
| 168:1 179:23,24 181:21,23 188:14 | 204:17 208:18 | al 3:9,10 8:24,24 9:21,22 25:13 | animal's 59:22 |
| | 212:3,20 215:15 | 69:7 157:20 158:7 186:6 | animals 17:11 24:5 25:4 29:14 |
| | 239:1 241:10 | alachlor 24:18 | 46:8 58:16,22 80:3,19 81:11 |
| | 246:3,5,22 251:18 | alarm 19:9 | 82:8,10 110:6 158:9 181:8 |
| | 255:15,20 256:18 | album 149:12,12 | |
| | 259:4 261:13 | alec 2:7 3:20 | |
| | 262:4 268:17,19 | alert 19:9 | |
| | ahead 27:17,23,24 29:18 30:24 40:11 | alike 193:10 | |
| | 40:13 45:2 46:4,6 | alive 272:21 | |
| | 47:22 62:4 66:1 | allow 59:1 | |
| | 66:15 68:14 79:1 | allowed 80:3 154:7 192:14 | |
| | 79:22 81:4 91:12 | | |

[animals - attempt]

| | | | |
|-------------------|-------------------|---------------------|--------------------|
| 188:13 192:13 | anyway 137:8 | 229:21 | articles 166:6 |
| 193:18 197:9,21 | apart 174:9,18 | appropriate 14:7 | artificial 77:4 |
| 202:16 207:21 | 273:3 | 123:18 177:6 | artificial 13:8,9 |
| 208:8 213:19 | apartment 213:8 | 203:3 233:13,21 | 78:12,18,20 79:7 |
| 228:14 242:5,23 | 220:17 221:11,11 | 254:24 257:8 | 117:1 |
| 254:9 257:12 | 221:12 225:14,19 | appropriately | ashton 77:1 |
| annual 88:5 | 246:11,12 259:17 | 88:24 | aside 117:22 160:8 |
| 208:23 209:8 | 259:23,24 268:17 | approval 34:22 | 172:15 187:24 |
| answer 7:24 11:6 | 269:23 272:15,16 | 35:5 | 252:6 |
| 11:8,11 12:5 | 273:2 | approved 28:19 | asked 12:12 18:21 |
| 27:17 28:1,3 | apartments 188:3 | 32:22 35:3 209:22 | 23:23 48:1 66:14 |
| 41:17,20 46:5 | 207:23 214:2 | approximately 3:4 | 99:12 156:18 |
| 47:11,12 57:21 | 225:16 259:16,18 | 18:14 | 157:18 203:8 |
| 60:22 66:1 82:2 | 259:20,21 260:12 | arbitrarily 44:6 | 204:19 227:1,15 |
| 99:12,22 100:6 | 260:13 261:6,16 | arbitrary 43:14 | 239:10 258:13 |
| 105:17 125:6 | 262:2 268:22 | archives 156:10 | asking 5:9 48:1 |
| 141:24 151:8,18 | 270:5,20 271:12 | area 12:3 17:18 | 63:16 121:14 |
| 154:20 177:11 | 271:18,21,24 | 19:19 20:11 21:16 | 133:17 187:19 |
| 187:18 225:24 | 272:1,3,13 273:5 | 71:9,13,18,18 | 225:24 226:21 |
| 227:7,13 229:23 | 273:14,20,21,22 | 72:13 85:2,4 | 227:4 228:11 |
| 230:7 241:4 | 274:17 275:2 | 104:14 108:10 | 236:17 |
| 258:12 | apparatus 271:9 | 113:3 137:17,19 | aspect 110:4 |
| answered 66:14 | apparent 120:7 | 154:2 164:22 | aspects 25:7 26:16 |
| 227:2 239:11 | 176:6 238:6 | 166:18 176:10,15 | 57:8,10,13,14 |
| answers 7:18,21 | apparently 24:5,6 | 178:1,7 179:8 | aspersions 241:22 |
| 100:11 | 62:15,20 95:10 | 183:20 197:3 | 242:2 |
| ant 130:5 | 163:1 201:7 | 213:15 226:8 | assignment 11:12 |
| anticipate 193:1 | appear 202:4 | 227:7 243:8 244:9 | 118:17 |
| anticipating 92:6 | 235:18 268:11 | 245:4 263:8 | assist 160:24 |
| ants 20:5 22:13 | appeared 2:8,16 | 276:24 | assume 83:8 186:6 |
| 23:10 120:17 | appears 58:7 | areas 15:20 16:19 | 192:10 232:7 |
| 123:17,20 125:9 | 251:5 267:6 | 24:2,17 30:21 | assumed 133:6 |
| 125:13,15,18,24 | appleton 17:19 | 32:6 71:7,11 | assumes 85:20 |
| 127:7 128:22 | application 18:11 | 174:11 256:11,19 | assuming 60:22 |
| 130:21 138:2,3,10 | applied 29:11 | 256:19 257:14,16 | 120:15 134:7 |
| 138:19 199:6 | applies 233:6 | 259:3,4 269:1 | 177:21 |
| anybody 104:18 | apply 121:5 | 275:5 277:14 | assumption |
| 241:17 | appraisal 11:16 | arenas 157:23 | 113:11 |
| anymore 97:1 | appreciate 30:12 | article 167:7 186:7 | attached 42:12 |
| 156:13 | 37:6 90:15 99:11 | 189:12 | attempt 270:10,13 |
| | 111:5 169:16 | | |

[attempting - bathroom]

| | | | |
|--------------------------|--------------------------|---------------------------|--------------------------|
| attempting 41:9 | aversive 24:13 | 182:13 187:2 | 271:10 272:5 |
| attending 3:15 | avoid 41:9 233:10 | 189:3 195:13,14 | 275:7 |
| attention 17:3 | avoidance 194:12 | 197:3 198:6 | base 59:20 64:21 |
| attenuated 177:16 | avoiding 107:4 | 213:18,19,20 | 208:12 250:6 |
| 180:22 | 193:20 | 216:5 217:7 219:9 | baseboards 32:4 |
| attenuates 177:13 | aware 8:7 34:21 | 222:1 223:10 | based 22:1 43:15 |
| attenuation 60:12 | 39:9,12 55:15 | 229:16 232:10 | 58:15 76:21 77:4 |
| 244:19 | 119:8 | 243:4 247:7 | 77:19 78:8 79:16 |
| attitude 121:22 | awesome 244:6 | 259:15 260:12,22 | 79:17,20,21 |
| attorney 278:14 | b | 261:4 262:11 | 102:24 105:13 |
| 278:15 | b 1:10 19:5 24:15 | 263:6,15,23 | 121:21 122:19 |
| attorneys 3:14 | 30:6 50:10,11,12 | 264:24 265:24 | 143:8 186:14 |
| attractant 213:14 | 50:14 60:23 61:1 | 266:12,19 267:20 | 188:15 201:13 |
| attracted 22:10 | 95:13 205:12 | 268:3,8 271:11 | 229:8 230:2 |
| attraction 20:23 | 206:21 211:14 | 273:16 274:13 | 253:22 266:14 |
| 32:7 | 212:15 213:3 | 275:12 | 267:6 |
| attractiveness | 215:7,12,21 218:1 | backdrop 60:14 | baseline 43:17 |
| 213:4 | 222:1,1 230:21 | background 15:24 | 90:19 210:24 |
| atypical 210:20 | 231:16 232:6,8 | 16:18 | basement 79:5,7 |
| audible 59:3,6 | 233:5,13 234:3,4,8 | backwards 75:21 | 96:24 106:16 |
| 93:13 185:11 | 235:2 242:15 | backyard 87:19 | 109:19 115:1,2 |
| 223:4 262:18 | 279:7 | bad 88:5 168:4 | 213:22 245:17 |
| august 74:12 90:5 | b104 272:6 | badly 189:15 | bases 10:10 |
| 94:21 | back 22:11 25:8 | 258:11 271:4 | basic 90:16 192:7 |
| aunts 13:18 | 26:20 35:21 36:18 | balance 193:21 | 202:8 |
| author 158:8 | 43:2 45:5,9 48:3 | 200:14 | basically 45:16 |
| 169:18 | 54:19 55:20 58:7 | balanced 210:18 | basing 143:6 |
| author's 162:2 | 64:7 67:21 71:16 | 213:2 | 244:21 245:5 |
| 169:20 172:6 | 72:2,20,23 73:21 | bar 18:8 134:6,6,8 | basis 24:12 28:6 |
| authors 160:11 | 74:11 82:5 88:23 | 134:15,15,19 | 32:23 51:14 |
| autumn 209:1 | 93:16 96:22 99:14 | 135:1,10 136:7,20 | 121:16 159:4 |
| available 17:22 | 104:14 106:8 | bare 115:10 | 168:1 176:4 |
| 156:6 159:16 | 108:3 110:13 | 269:24 | 197:16 227:8 |
| 219:18,20 223:12 | 112:18 113:13 | barns 17:2 | 240:7 251:24 |
| 223:21 | 118:4 120:23 | barren 270:12 | 253:8 262:17 |
| avenue 2:3 | 122:10 124:17 | barrier 69:10 | bates 196:9,10 |
| average 88:5 | 137:1 141:16 | 106:23 135:12 | 198:22 205:1 |
| 149:8,20 152:11 | 143:23 146:24 | 136:17 256:3 | 248:10 |
| 165:9 180:23,24 | 150:7 158:6,17 | 272:21 273:1 | bathroom 110:15 |
| 244:24 246:3,5 | 159:8 160:2 | barriers 225:19 | 185:23 |
| 249:13 | 168:14 179:11 | 268:23 269:24 | |

[bats - bouncing]

| | | | |
|---|---|---|---|
| bats 42:13,16,19 42:23 44:21 45:13 46:11 61:20 | 120:8 121:3 131:5 133:11 134:2 137:24 180:21 183:4 189:14 203:24 228:19 232:14 240:16 247:20 257:7 264:11 | 41:1 55:19 71:12 77:6 94:15 100:5 114:11 126:18 261:12 | 202:21 268:15 |
| bear 46:17 | | bet 46:18 64:15 113:14 | black 201:23 202:24 203:1,12 204:1 |
| bearing 152:12 196:8 248:10 | | better 28:24 59:2 174:20 203:7 249:11 | blankets 108:17 270:3 |
| beaten 18:10 | | beyond 106:22 166:4 229:8 230:2 253:20 | blaster 23:15 |
| heck 77:12 | | bh 152:12 | blender 135:4 |
| becoming 28:21 | bell 1:10 11:21 12:1,19 13:13 29:4 32:11 33:15 33:17 42:20 43:7 44:23 47:2,7 51:14 55:10,16 56:5,18 57:10,15 57:17 62:1,11,12 105:21 110:11,23 113:2 114:16,21 114:24 123:7 129:16 137:3 144:21 145:9 152:10 173:24 174:13,15 176:17 183:15 185:15,16 185:17 187:9,14 187:24 188:6 200:22 201:14 219:16,24 222:6 222:20 225:3 226:3,15 229:7 230:1 243:8,19 245:1 246:20 253:9 276:22 277:4,10,12 | | block 114:22 |
| bed 20:5 86:3 108:22,24 | | bhh 1:10 3:9,23 5:7 9:1,21 147:17 198:23 248:11 | blocked 135:8 |
| bedroom 270:1 | | bias 172:11 | blocking 106:24 134:20 139:16 |
| bedrooms 108:16 245:22 | | biased 207:19 213:15 | blood 198:4 |
| beds 31:7 86:1 108:16 | | big 84:10,10 165:12 168:18 245:19 247:8 | blue 87:16,22 |
| began 235:12 | | bigger 84:20 246:4 246:6 247:1 | blurb 167:16 |
| beginning 44:5 49:23 72:21 81:11 94:21 132:14 150:8 | | bins 173:19 | board 70:3 268:23 |
| begins 132:17 | | biological 166:3 | bodily 197:22 |
| behalf 1:5 2:8,16 3:22,24 | | biologist 16:3 128:10 184:4 214:7 254:6 | body 193:11 202:10,14 |
| behave 24:19 | | biologists 128:11 | bold 38:9,15 |
| behaving 82:16 | | biology 5:2 16:4 210:4 254:8 | book 198:19 |
| behavior 16:7,9 17:10,12 22:7 78:24 82:11 210:6 214:8 221:1,2,4 242:23 254:8 | | bird 18:13,18 19:24 20:10 22:18 22:24 23:22 24:12 42:12 53:3 55:1 60:18 68:1 89:4 96:21 | boosting 54:10 |
| behavioral 116:3 | | birds 24:19 | border 215:19 |
| behaviors 79:8 81:22 190:12 | | bit 22:8 64:16 87:17 91:18 | born 101:20 |
| belabor 114:14 | belong 156:12 | | borth 2:19 4:4,6,6 13:1 |
| belief 65:21 | ben 2:20 3:2 | | borth's 12:3,23 |
| believe 21:23 27:13,20 77:17 78:6 80:24 98:10 98:18 104:23 105:2 117:11 | bend 231:3 beneath 259:9 benefit 7:23 253:6 best 8:4 11:16 21:12 38:3 39:4 | | bottom 25:22 36:2 43:20 104:5 115:16 153:8 196:10,15 200:1 233:3 276:9 |
| | | | bottoms 32:2 |
| | | | bought 105:20 122:10 |
| | | | bounce 231:4 244:18 263:4 |
| | | | bounces 70:4 264:5 |
| | | | bouncing 72:11 107:8 124:24 |

[bouncing - catastrophic]

| | | | |
|---------------------------|---------------------------|---------------------------|---------------------------|
| 263:13 | 131:12 132:1,20 | called 1:16 4:11 | carpet 68:13 70:13 |
| bound 70:11 | 138:19 139:4 | 23:13,24 38:20 | 71:24 177:3,15 |
| bowl 216:9,12,13 | bueno's 120:13 | 76:9,11 147:16 | 243:7,10 244:15 |
| 216:24 | 130:13 | 167:17 | 244:17 269:24 |
| box 30:3 100:9,15 | bugs 20:5 | calls 19:9 99:21 | carpeted 177:5 |
| 100:17,20,21 | build 101:2,7 | camera 7:5 | 268:22 |
| 269:5,6,9,18 270:8 | 109:20 | cameras 269:10 | carpeting 68:7,11 |
| 270:8 274:20 | building 101:1 | campus 80:16 | 68:18 70:18 85:12 |
| boxes 69:2 255:1,7 | 152:9 153:14 | canada 19:10,20 | 85:19,21 |
| 255:12 256:5 | buildings 45:8 | 20:22 32:23 35:3 | carried 114:20 |
| 269:15,17,22 | 173:20 | canadian 34:21 | carries 60:8,9 |
| 274:19,23 275:2 | built 55:24 101:11 | 35:5 | carrot 117:15 |
| branch 22:10 | 111:3 243:24 | capabilities 30:15 | carry 80:19 |
| brands 69:8 | 268:23 | 30:16 | 241:20 |
| break 58:1 72:15 | bulb 115:10 | capable 225:6 | carrying 87:22 |
| 72:19 118:3 150:6 | bulletin 26:24 | 226:3,23 | 166:8 224:23 |
| 158:16 185:23 | bulletins 183:22 | capital 4:24 | 276:12 |
| 186:2,21 187:1 | bumping 190:7 | 210:13 | cars 117:2 251:14 |
| 242:24 243:3 | bunch 79:3 187:6 | caption 3:8 | 252:13 |
| 275:8,11 | burned 54:11 | captioned 280:5 | case 3:9,11,12 6:2 |
| breeding 115:23 | bursor 2:2 3:18 | captive 115:23 | 6:5,19 9:2,8,24 |
| 209:3 | burst 162:23 | 203:20 210:5 | 10:13 11:13,18 |
| briefly 5:3 76:14 | 163:20 | captivity 202:20 | 13:22 14:6 15:10 |
| 150:3 | butter 108:6 | captured 85:18 | 15:18 25:13 40:14 |
| bringing 82:7 | 168:20 | 88:2 | 45:9,17 49:9 62:6 |
| brings 190:8 | buy 103:8 | car 102:19 117:5 | 67:20 82:2 94:5 |
| broad 201:5 | c | 117:16 250:21 | 106:22 110:12 |
| broadcast 61:15 | c 1:15 4:10,19,20 | 251:1,16 | 118:14,18 150:11 |
| 84:23 | 4:21 8:11 60:23 | cardboard 30:3 | 158:6 198:11 |
| broadcasting 96:1 | 61:1 95:13 | 69:2,10,15 70:13 | 201:9 208:22 |
| broaden 84:19 | c.v. 5:24 | 254:24 255:5,7 | 209:6 220:4 |
| broadens 178:3 | cabinet 111:19 | 269:4 | 221:22 277:6 |
| broadly 16:3 | cabinets 108:18 | cardiac 171:4 | cases 39:6 158:5 |
| brother 160:18 | 141:19 | cards 267:1 | 162:17 190:23 |
| brother's 122:11 | cabins 106:4 | care 102:15 116:8 | 191:10 193:16 |
| brought 33:16 | cages 82:4 154:6 | career 22:6 | casing 55:13,16 |
| 116:1 275:15 | calhoun 189:3,11 | careful 128:12 | cast 241:22 |
| bueno 9:3 118:21 | calhoun's 189:4 | carefully 121:14 | casting 242:2 |
| 119:10 120:3 | call 52:5 65:24 | 122:15 | cat 59:5 106:1 |
| 121:10 123:1 | 246:8 253:19 | caregiver 161:1 | catastrophic 188:8 |
| 125:9 130:4 131:4 | | | |

[catch - clearly]

| | | | |
|---|--|--|--|
| catch 60:4 94:18 99:24 182:5 | 114:3 131:13 140:1 148:15 | chance 100:3 164:18 167:9 | chose 76:22 249:19 |
| catching 87:15,16 90:7 | 152:18 159:14 161:8 164:4 | 173:9 185:12 221:24 | christmas 87:18 |
| cats 117:12 | 170:22 172:22 | change 10:19,23 20:16 57:3 173:16 | circumstances 129:24 139:3 |
| caught 88:5,6,11 88:12 89:6 90:3,4 | 175:20 184:10 195:17 230:23 | 191:8 197:8 200:11 202:15 | 195:4 222:12 260:24 |
| 90:10 94:17 107:11,20,22 | 248:12 250:10 | 210:19 211:5,11 221:1 251:8 | citation 87:15 |
| 108:1 204:1,4 | certainly 16:12 24:23 123:13 | changed 21:2 160:3 234:19 | citations 159:19 159:23 |
| cause 22:18 24:19 68:22 125:14,22 | 131:21 139:8 175:10 186:5 | changes 137:6 280:7,10 | cited 150:16 151:21 170:19,22 |
| 130:7 177:16 183:11,13 193:20 | 215:2 230:15 238:2 | charles 16:13 | 187:8 |
| 194:12 267:7 | certainty 50:3,7 | chart 58:14 196:13,19 264:9 | citing 157:7 168:6 168:15 169:13 |
| caused 20:21 80:18 130:5 194:1 | certified 1:18 3:19 5:6 278:2 | 267:18 275:6 | 189:10 |
| 212:10 231:2 268:11 | certify 278:2 | check 186:12 213:22 | claim 13:8 47:20 168:2 185:4 |
| causes 40:17 171:4 204:5 | cetera 25:13 62:3 206:23 | checked 55:2 269:22 | 220:21 223:1,2 249:16 270:6 |
| causing 185:19 192:11 | chain 103:7,8 | checking 169:14 | 277:12 |
| ceiling 133:6 138:2,11 | chair 142:1,2 | cheese 208:8 | claimed 29:20 226:19 |
| ceilings 123:20 | chamber 191:12 191:22 193:12 | chemical 24:4 | claiming 13:3 39:1 |
| cell 57:5 | 204:5,11 205:11 | chemicals 24:14 | claims 48:4,8 147:9,16,24 |
| cellar 20:5 96:21 96:23 | 205:12 211:13,13 212:15,16 213:3,3 | chewed 31:7,7 225:18 | 150:16 157:14 226:15 |
| cells 163:23 | 214:16,20 215:6,7 215:12,13,21,22 | chi 90:8,11 | clarify 6:21 194:19 240:9 |
| cent 19:17 | 216:6,9 218:1,1,5 218:13 221:14 | chicago 1:20 2:12 3:7 18:13 278:19 | clark 18:9 |
| center 140:18,22 142:2,15,21,23 | 222:1,1 229:3,11 230:21 231:16,17 | china 32:14 203:9 | class 5:6 16:17 169:7 |
| centimeter 69:10 255:4 | 232:6,6,8,8 233:5 233:13 234:3,4,8 | chinese 12:23 13:7 47:3 175:12 | classes 3:20 5:6 |
| centimeters 69:14 154:10 | 235:2 242:15,18 | 188:23 203:1 245:2 | classic 35:17 189:4 |
| central 18:8 | chambers 188:12 191:1,2 192:17 | chirps 61:21 | clean 24:5 |
| certain 8:13 19:2 30:20 39:23 44:12 | 209:7 222:13 228:17 229:4 | choices 40:18 | clear 111:6 113:2 |
| 52:15 57:8,9,13 | 230:22 | cholesterol 168:19 | clearing 254:23 |
| | | choose 58:11,15 203:5,7 | clearly 6:18 113:12 256:13 257:6 261:21 |

[clicks - confused]

| | | | |
|--------------------------|-------------------------|--------------------------|---------------------------|
| clicks 61:20 | 139:6,9 182:2 | compensation | 169:18,20,23 |
| close 30:11 85:6 | 209:7 212:11 | 15:17 | 172:7 182:7,14 |
| 110:5 163:19 | 223:17 | competent 242:17 | 197:11,17 201:19 |
| 182:12 224:12 | commencement | complain 106:6 | 214:4 228:16 |
| closed 29:12 30:9 | 278:3 | complained | conclusions 27:12 |
| 67:15,19 127:1 | commencing 1:21 | 236:13 | 79:20 158:7 |
| 222:12 | comment 35:16 | complaint 25:12 | 166:12,20 172:4 |
| closely 88:20 | commentary | 25:19 35:23 125:9 | 196:6 197:7 |
| 94:24 | 159:22 | complete 10:2,9 | 201:13 208:12 |
| closest 180:23 | commented | 88:4 114:7 173:12 | 229:6,24 271:6 |
| clothes 270:2 | 173:17 | 178:13 255:10 | concrete 259:10 |
| coffee 142:2 | comments 8:23 | completely 30:9 | condition 211:4 |
| cohort 18:3 | 9:19 11:15,15 | 39:1 79:11 91:7 | 213:6 |
| coin 212:2,11 | 25:12,18,23 35:22 | 179:8 214:9 | conditions 13:4 |
| colleague 3:20 | 150:15 155:19 | 218:10 | 110:22 165:18 |
| collective 180:17 | 178:20 | completion 179:9 | 209:3 213:1 |
| collision 20:17 | commission | component 63:10 | conduct 110:22 |
| columbus 5:1 | 249:16 | components 56:14 | 114:15 |
| column 153:11,21 | common 28:21 | compost 224:1 | conducted 13:4 |
| come 8:2 22:11 | 79:24 108:23 | compulsive 128:10 | 32:13 45:13 79:17 |
| 37:17 91:16 96:23 | 122:23 130:2 | computer 11:7 | 79:21 93:24 187:9 |
| 104:19,21 105:7 | 149:5 203:4 | 75:21 89:10 | 242:3 259:16 |
| 106:8 107:22 | 226:13 | concentrate | 271:4 277:11 |
| 122:5 143:23 | communicate 6:18 | 192:12 | conducting 200:17 |
| 145:8 159:24 | 43:22 46:14 | concept 38:20 | 203:9 |
| 169:6 195:13 | 202:12 237:5 | 39:13 40:5,6 41:5 | conference 26:14 |
| 208:24 209:1,1,14 | communicated | 72:4 192:7 | 95:3 |
| 223:10 245:14 | 35:9 | concerned 141:1 | confident 103:13 |
| 258:10 263:15 | communication | 185:19 224:6,24 | confine 82:10 |
| comes 52:6 72:2 | 167:2 | concerning 41:12 | confined 76:22 |
| 275:23 | company 234:14 | 41:23 42:13,14 | 77:18 78:7 80:23 |
| comfort 59:2 | compare 174:15 | 278:4 | 81:18 126:19 |
| comfortable 46:23 | compared 90:8 | conclude 164:20 | confirm 27:5 |
| 201:13 266:18 | 209:12 271:23 | 253:8,15 | confirmation |
| comfortably | comparing 86:8 | concluded 152:7 | 12:18 |
| 216:23 | 90:17 197:9 | 164:13 171:24 | conflict 79:2 94:4 |
| coming 37:22 | 208:16 218:20 | concluding 42:18 | confounding |
| 64:21,24 97:1 | comparison 88:8 | conclusion 33:8 | 81:15 204:15 |
| 106:12 108:5 | 208:19 | 35:2 42:19 44:22 | confounds 238:21 |
| 109:18 124:12 | compensated | 45:20 46:24 47:7 | confused 57:11 |
| 136:17 138:10,19 | 15:10 | 120:9 122:1,5 | 88:21 90:1 175:8 |

[confused - correct]

| | | | |
|--------------------|--------------------|--------------------|--------------------|
| 175:9 194:9 | constitutes 225:1 | continual 61:14 | 124:16 132:2 |
| confusing 146:21 | 278:9 | continually 59:16 | 196:11 245:12 |
| confusion 205:7 | construction | continue 6:9 40:19 | corners 83:22 84:1 |
| congregate 24:17 | 53:17 54:14 56:15 | 221:8 | 123:20 124:8 |
| connected 136:16 | consultant 20:14 | continued 41:8 | correct 5:15 9:24 |
| 154:9 | 68:1 | continuous 137:10 | 10:1 12:11,20 |
| connecting 231:23 | consulting 18:13 | continuum 44:4 | 14:4,16 15:14 |
| connection 5:10 | 19:18,24 20:11 | contradiction | 18:15 27:5,6,10 |
| 6:19 35:2,11 | 21:4 | 174:12 197:4 | 30:22 31:13 32:18 |
| connections 17:20 | consumed 214:16 | contradicts 157:14 | 33:19 35:11,12 |
| conscientious | 215:6,12 | contrary 143:8 | 41:14 42:14,15 |
| 241:19 | consumers 148:22 | 245:9,10 256:6 | 43:8 44:14,18 |
| consciously 49:19 | 149:2,21 246:19 | contrast 273:13 | 45:1,22 48:9 52:1 |
| consequences | consumption | contribute 169:9 | 54:15 56:1 58:12 |
| 100:3 | 216:6 | contributed 28:14 | 58:17,20,21 60:23 |
| consider 64:3 | contact 37:2 178:5 | control 21:16 87:7 | 60:24 61:2 68:3 |
| 102:1 | 216:24 | 91:9,10 92:12,13 | 69:23 72:7 75:3,4 |
| considerable | contacted 55:1 | 153:9 156:8 162:2 | 75:7,13,18,20 76:6 |
| 182:23 | 120:1 121:10 | 164:3 192:7 206:7 | 80:6 82:13 83:9 |
| considerably | contacting 120:24 | 207:3,10,13 | 83:17,24 84:5 |
| 10:21 | contain 10:9 14:10 | 209:23 210:2,10 | 85:10,11,12,15,19 |
| consideration | 14:18,23 15:3,9,17 | 210:14,16 213:6 | 85:22 86:1,5,11,14 |
| 61:23 | 26:6 85:24 259:3 | 214:9 264:20 | 86:17,18 88:8 |
| considerations | 259:4,18 | 272:15,16 | 90:24 92:8,15 |
| 55:8 | contained 119:14 | controlled 210:7 | 93:22 94:2,7,11 |
| considered 14:11 | 259:17 | controls 93:4 | 95:24 97:9 98:13 |
| 14:19 15:4 43:16 | container 84:5,13 | 96:14 193:10 | 98:16,17 101:8 |
| 44:13,14 142:14 | 211:19 223:24 | 208:2 | 104:17 105:15 |
| 234:2,3,4,6,8,11 | containers 13:8 | convenient 80:21 | 110:8,19 114:16 |
| considering | 83:14,17,23 84:1 | conversation | 117:18 119:7 |
| 244:14 | 85:9,17,24 128:5 | 12:14,17 136:22 | 123:24 124:16 |
| consistency 271:5 | contains 15:1 | cook 102:2 | 128:23 145:21 |
| consistent 202:10 | 198:13 | cooking 102:2 | 149:16,17 162:12 |
| consistently 211:7 | contend 225:3 | copies 10:2 146:10 | 168:15 170:12 |
| 212:4 221:7 | 230:19 | 146:12 | 172:9 182:4 |
| constant 38:10 | content 76:15 | copy 143:15 | 187:12 193:8 |
| 95:14 | 247:23 | 198:17 | 197:14 198:22 |
| constantly 96:2 | contention 42:17 | copyright 22:18 | 201:15 206:2,23 |
| 190:7 | 262:10 | cord 110:12,15,18 | 207:15,24 209:18 |
| constitute 78:7 | contents 144:20 | corner 71:21,23 | 214:17,21 216:7 |
| | | 71:24,24 72:5,7 | 216:18 218:11 |

[correct - date]

| | | | |
|--|---|--|--|
| 220:5,13 221:20 223:11 228:2 231:21 232:2 233:22,24 234:15 235:3 239:24 242:5 248:21 249:9 250:1 251:2 252:4 253:18,23 255:13 258:2 259:19 260:1 261:9,18 262:24 263:3 264:14,19 264:20 265:4,21 265:22 266:1,6,10 266:22 267:8 268:8,13 272:18 276:15,20 corrections 280:7 correctly 28:9 30:19 35:20 36:6 50:16 75:6 77:15 92:6 111:6 138:5 237:15 correspond 56:23 couch 31:20,23 32:1 70:24 141:24 142:1 couches 32:1 68:7 counsel 3:8 6:24 148:13 278:14,15 count 13:3 18:12 82:1 179:11 225:21 233:8 241:20 266:2,23 269:3,5,20 counted 104:2 207:10 214:24 217:24 231:7,19 231:24 232:7 233:4,13 235:2 239:18 267:2 | 274:16 counter 111:20,22 112:4,19 113:1 125:17 130:17,21 131:4 134:13,14 134:14,19,23,24 135:6,7,17 136:4 136:24 141:5 224:1 counters 31:6 126:22 countertop 112:16 112:24 126:9 counties 17:23 18:4 counting 214:22 271:17,18 272:2 country 116:2 counts 215:3,4 218:7 266:23 269:8 270:14 271:3,5 272:8,13 274:22 county 1:18 278:1 couple 94:16 267:9 course 16:5,9 23:21 38:10 45:8 68:1 83:20 93:6 112:18 117:3 175:11 182:17 206:20 210:22 212:13 235:6 240:14 260:9 courses 16:5 17:6 116:6 court 1:1 3:12 7:7 7:7,12,15,23 8:9 52:12 57:22 131:10 139:20 152:16 161:6 | 164:1 172:18 175:17 176:1 179:10 184:7 247:24 248:9 250:8 cover 137:15 226:8 246:24 251:17 269:19 270:13 coverage 243:8 244:9,22 249:22 250:5 covered 17:5 87:16 276:24 277:14 covers 109:9,10 227:6 245:4 coyote 23:1 coyotes 117:12 crack 138:2 258:1 262:24 create 154:3 creating 257:11 creatures 82:1 114:7 162:15 credence 163:9 critical 170:10 criticism 30:12 123:2 criticisms 37:7 criticized 176:2 criticizing 39:23 40:1 cross 4:21 276:1 279:5 crosses 84:19 crowd 198:1 crowded 190:7,14 crucial 110:3 csr 1:17 2:23,24 278:1,24 | cupboard 127:1,2 127:3,12,19 129:8 129:11 cupboards 126:22 128:3 curious 87:20 curtains 70:18 curved 231:1 customer 251:5 cv 1:9 3:13 cycles 43:5,10,17 43:22 44:16 46:12 60:3,5,10,11 61:11 63:5,7,9 66:19,23 162:23 185:5,8 d d 1:10 4:20 279:1 daily 196:13 damaged 31:9 damages 13:22,23 14:2,2,5 damn 90:9 damp 70:5 126:20 damped 39:11 dampen 70:7 dang 270:16 data 10:15 11:16 14:11,19,22 15:4 27:12,20,22 28:7 48:7 92:2,14 167:5,10 172:11 189:17 202:23 206:10 220:19 222:19 225:5 226:2,11 227:10 227:13,23 228:11 230:2 241:16 267:1 269:13 272:7 date 3:3 48:17 94:20 162:9 |
|--|---|--|--|

[date - designed]

| | | | |
|---------------------------|---------------------------|---------------------------|---------------------------|
| 166:10 168:13 | deals 210:2 | decrease 238:2 | depends 31:24 |
| dated 153:7 | death 40:18 221:9 | dedicated 16:9 | 67:20 84:7,17 |
| 198:14 | 236:11,13,16 | 17:10 | 103:5 109:8 114:1 |
| dates 74:11 90:5 | 259:24 | deer 20:6 116:20 | 124:12,20 128:4 |
| 160:12 267:10 | deaths 236:8 | 117:2,17 250:21 | 128:15 129:3 |
| daughter 101:20 | 260:10,15,21,23 | 251:1,14,16 | depict 145:5 |
| 115:3 | 261:9 | defective 66:6 | deponent 277:23 |
| daughter's 270:1 | debbie 9:5,6 | defend 216:12 | deposition 1:15 |
| day 1:21 10:14 | 118:21 248:24 | defendant 3:23 | 3:5 5:16 7:3 8:14 |
| 14:22 36:3 80:19 | 252:18 | 4:1 | 10:14 12:14 14:22 |
| 95:2 152:1 185:2 | debris 270:3 | defendants 1:13 | 52:16 118:15,18 |
| 206:19,23,23,23 | decades 48:20 | 2:16 14:1 | 119:3,20 120:7 |
| 207:2 210:22,23 | 55:24 56:4 156:15 | defense 23:24 | 131:11,14 132:1,4 |
| 211:2 215:4,12 | december 74:12 | 180:1 | 132:8 138:8 |
| 216:7 218:9,12,13 | 90:6 153:7,8 | define 50:22 71:16 | 139:13,21 140:2 |
| 228:6 229:10 | decibel 25:6 33:14 | defined 41:6 | 140:12 148:16 |
| 231:21 235:21,22 | 51:15 55:4 56:9 | defines 44:7 | 152:19 159:21 |
| 246:15 252:21 | 56:22 58:23 68:6 | defining 225:13 | 161:9 164:5 |
| 264:10,10,23 | 95:10 99:8 104:10 | definitely 72:13 | 172:23 175:21 |
| 265:23 266:3 | 113:22 162:18 | 75:5,19 147:22 | 176:20 184:11 |
| 267:16,17,19,24 | 170:11 173:5,23 | definition 14:4 | 195:18 244:23 |
| 270:19,23 272:3 | 179:7,18,21 | 43:4 65:2,11 | 247:9 248:13 |
| 273:15,16,19,22 | 180:12 185:15 | 217:8 226:16 | 250:11 276:4 |
| 278:19 280:11 | 201:17 253:24 | degree 70:17,22 | 278:6,11 280:1,4,8 |
| days 87:20 90:7 | 262:21 | 110:5 113:23 | depositions 9:1 |
| 94:16 171:21 | decibels 33:16 | 177:15 191:18 | 11:14 118:24 |
| 205:13,23 206:20 | 51:9,10 162:20 | delay 196:6 | describe 69:5 |
| 208:11,12 211:2,5 | 165:7 171:3,15,18 | delineation 43:14 | 136:14 |
| 211:21 212:14,16 | 180:4,6,23,24 | delivered 95:2 | described 50:11 |
| 215:10 228:24 | 181:4,7,12,16,16 | 208:8 | 128:9 139:15 |
| 229:8,15 230:2 | 181:17,20 182:3 | demise 160:19,20 | description 53:11 |
| 270:18,19 273:15 | 185:6 | demonstrate | design 22:22 23:7 |
| dead 212:10 | decide 24:12 76:16 | 182:8 | 23:10 33:20 41:18 |
| 238:18 240:10 | 208:9 | densely 217:7 | 58:6 80:3 82:23 |
| 242:5 272:20 | decided 88:1 | density 189:23 | 92:19 96:9 167:11 |
| 276:11 | 240:19 | 217:17,19 254:9 | 188:8 190:20 |
| deal 16:6 25:1 | decision 252:1,4 | department 28:20 | 250:5 254:7 |
| 128:18 184:1 | declaration 280:2 | depend 46:9 | designated 225:13 |
| dealing 16:19 60:2 | declare 280:3 | 219:14 | designed 19:5 23:4 |
| 128:15 228:4 | decoy 23:1 | depending 123:22 | 33:11 56:4 189:15 |
| 238:3 | | 243:15 | 257:16 |

[designing - dismantle]

| | | | |
|--|--|---|---|
| designing 19:4 22:23 47:15 200:13 | 43:3 44:23 47:8 49:18 50:14 55:10 55:16 56:5,18 | 203:13 209:9 213:2 252:9,14 267:13,14 | 148:3,22 149:3,7 273:17 278:8 |
| designs 26:18 39:23 76:23 | 57:10,14,15,17 62:1 76:24 85:15 | differences 12:24 different 23:15 | directional 55:21 72:8 109:19 114:9 263:3 |
| desperation 240:13 | 85:22 105:20 113:9 114:16 | 26:23 33:12 36:16 44:2 52:7,8,9 54:7 | directions 70:5 147:2,5 |
| despite 106:23 261:12 265:3 266:9,21 | 115:1 125:14,22 142:9 148:23 | 54:12 56:16 57:9 57:14 58:10,22,23 | directly 136:20 142:22 157:8,24 231:4 263:19 278:16 |
| detail 147:2 | 164:16,24 167:22 169:21 172:1,8,21 | 69:8 79:8,9 86:23 95:18,23 98:7 | disadvantages 81:17 |
| detailed 169:16 | 177:7 187:24 | 99:9 123:24 171:7 193:22 195:7 | disagree 169:17 169:24 172:6 226:18 |
| detect 230:20 255:13 | 252:8,12 276:22 277:1,6,11,13,14 | 208:21 218:23 234:1,20 273:17 | disappear 206:20 disappeared 221:21 238:5 |
| determination 51:12 121:1,5,9,15 121:17,20,21 122:3,16,19 | devoid 268:22 devoted 22:6 147:5 | differently 81:1 116:16 | disassembled 273:4 |
| determine 51:19 166:21 177:15 188:14 251:20 | diagnose 119:21 diagnosing 130:13 | difficult 79:19 80:14 268:20 | disconnect 272:24 discount 218:22 |
| determined 130:19 174:10 176:21 | diagonal 136:19 diagram 179:4 | difficulty 109:15 dilatant 22:8 | discouraging 157:11 |
| determining 55:8 61:23 | diane 9:4 33:1 176:18 203:24 240:19 244:23 | dimensional 23:1 dimensions 244:24 | discovers 272:20 272:21 273:12 |
| deterrent 175:19 184:8 | die 260:8 262:3 died 235:5,19,22 235:23 236:24 237:15 238:1,8,23 259:23 262:1 276:8,15 | diminish 211:14 266:12 diminishes 180:1 dining 132:22 134:10,11,13 136:16 137:11 139:9 | discuss 6:10 40:5 73:2 95:12 132:17 178:18 |
| device 19:8 47:17 50:16 84:22,23 85:1 86:4,13,16 87:3 94:6 105:21 109:6 110:23 117:16 123:3,6,7,8 123:24 124:3,14 129:12 142:16 154:10 162:14 | dieresis 171:4 differ 210:17 differed 206:22 difference 43:12 51:19 56:13,15,21 59:22,23 79:2 95:7,11 97:6 98:20,23 106:9 115:20 117:4 168:23 193:14 194:20 201:18 | dinner 163:24 direct 4:13 32:21 132:14 145:15 174:12 197:4 219:16 279:4 directed 145:16 directing 135:19 135:24 143:13 direction 98:16 114:10 130:9,22 135:13 146:22 | discussed 186:16 201:7 202:18 250:1,24 discussing 238:7 discussion 115:12 115:15,17 182:16 disease 40:17 dishwasher 136:23 dismantle 271:8 |
| device's 173:22 | | | |
| devices 20:2 23:16 33:7,9 34:18,22 35:3,14 42:20 | | | |

[disparage - easily]

| | | | |
|----------------------------|-------------------------|--------------------------|---------------------------|
| disparage 211:14 | divulging 276:13 | doorway 154:9 | 42:21 80:18 139:6 |
| disparity 191:3,4 | doctor 128:9 | double 55:2 | 167:23 169:22 |
| dispel 165:17 | document 25:13 | 186:12 188:23 | 172:8 179:5 217:2 |
| dispersal 164:21 | 25:19 38:24 67:9 | 191:22 247:11 | 222:6,10,20 223:1 |
| disperse 165:17 | 71:11 131:13 | 249:23 | 225:12 257:9 |
| dispersed 197:3 | 140:1 143:18 | doubt 49:15,20 | 270:21 277:13 |
| disposition 119:24 | 144:6 148:15 | 181:20 221:17 | driven 30:8,11 |
| dissatisfaction | 152:18 161:7,8 | doubtful 262:15 | 194:2 225:17 |
| 119:22,24 121:12 | 164:4 172:22 | downs 101:21 | driving 11:22 12:2 |
| dissertation 166:2 | 175:20 184:10 | dozens 36:4,11 | 13:13 29:9 68:23 |
| distance 60:11 | 195:17 198:9 | 37:14 | 123:9 129:17 |
| 68:17 106:24 | 205:3,5 238:9,11 | dr 4:4,15,19 8:11 | 151:3 225:6 226:3 |
| 154:12 165:7 | 248:10,12 250:9 | 8:18 9:21 10:14 | 226:23 237:21 |
| 178:2 197:1 223:3 | 250:10 | 12:3,22,23 13:1,1 | 251:17 256:16 |
| 253:20 254:4 | documented 104:1 | 13:2,8 14:22 | 276:24 |
| 264:1 | 276:7 | 16:13 29:10 34:23 | dropped 162:22 |
| distances 227:21 | documents 8:10 | 36:20 37:7 40:24 | droppings 31:6 |
| distinction 43:19 | 8:13 10:18 35:1 | 49:2,5,8,12 50:12 | 90:1 91:22 106:7 |
| 44:3 149:21 | 35:11 52:11,14,15 | 51:21 52:20 69:6 | 192:16 |
| distinguish 103:1 | 64:1 | 118:7 131:18 | drove 218:10 |
| distractions 81:9 | dog 59:5 | 150:10,16 157:8 | duchesne 34:23 |
| distressful 40:16 | dogs 117:12 | 157:14,24 158:20 | due 10:12 68:22 |
| distressing 42:10 | doing 20:14 41:1 | 159:5 174:24 | 82:11 204:4 254:7 |
| 183:11 | 77:5 79:13 81:8 | 187:5,8 195:22 | 260:4 |
| distributed 206:16 | 100:4 163:5 | 198:12 201:18 | duly 4:8,11 278:3 |
| distribution | 166:11 186:14,16 | 202:1 207:18,23 | duration 159:3 |
| 190:24 192:2 | 197:22 212:4 | 213:13 225:11 | 171:21 |
| 204:20 205:15,21 | 218:20 | 239:4 243:7 | <hr/> |
| 206:4 210:22 | domestic 203:21 | 254:24 255:21 | e |
| 260:11 265:15 | 203:23 | 259:3,5 275:22 | e 19:5,5 160:3 |
| 266:6 | dominant 198:6,7 | 276:3 | 279:1,7 |
| distributions | donahue 144:14 | drafted 89:8,9 | earlier 44:19 54:8 |
| 206:22 207:1 | 144:18 | draw 198:4 229:6 | 55:23 85:19 95:12 |
| district 1:1,2 3:12 | donohue 259:15 | 229:24 | 140:21 202:18 |
| 3:12 | door 30:11 67:21 | drawing 201:13 | 225:5 232:12 |
| disturb 60:2 110:6 | 67:23 104:22 | dreams 244:1 | 237:24 244:13 |
| 193:13 262:14 | 106:18 109:24 | dresser 71:24 | 247:13 250:1,24 |
| 270:12 | 140:17 142:17,20 | drew 179:11,12 | early 164:23 209:4 |
| disturbing 268:18 | 262:23 | drifted 116:11 | ears 117:9 |
| 270:7,9 | doors 67:16,19 | drive 29:6,15,24 | easily 104:24 |
| | 129:21 130:1 | 35:15 38:2 40:9 | 105:2 |

[east - equipment]

| | | | |
|----------------------------|---------------------------|---------------------------|--------------------------|
| east 111:21 | efficacious 253:10 | electronic 54:9 | 173:9 208:10 |
| easy 17:13 75:20 | 253:16 254:3 | 156:4 | 226:8 227:12 |
| 155:21 | 256:7,10 | elegant 191:19 | 237:7,16,17 |
| eat 168:20,20 | efficacy 11:21 | elephants 43:22 | 266:10 280:4 |
| 182:3 216:12,13 | 12:1,19 13:1,12 | elevators 171:23 | entirely 13:20 |
| 216:17,23 217:4 | 20:4,8 45:17 | eliminated 81:8 | 46:9 63:9 64:23 |
| 221:23,24 224:5 | 46:24 47:2 76:24 | email 248:19,20 | 182:20 |
| eating 24:17 | 77:6 81:7 85:15 | 248:21,24 249:7 | entirety 238:10 |
| 108:16 | 85:21 86:4 110:4 | emeritus 5:2 | entitled 147:24 |
| echos 263:15 | 123:14 151:10 | emit 194:4 | entomologist 16:1 |
| edge 90:9 | 152:12 157:12,15 | emitted 193:24 | 16:2 |
| editor 26:21 | 172:19 191:22 | 194:22 | entomology 16:4,7 |
| effect 69:18 70:23 | 194:21,23 211:13 | employ 121:18 | 37:3 156:8 |
| 78:21 81:13 91:17 | 228:14 229:7,10 | employee 18:17 | entrance 145:17 |
| 107:6 113:15 | 242:14 251:9,20 | 278:13,14 | entry 74:11 104:9 |
| 114:4 152:8 | 253:2 256:2,4 | empty 154:11 | 106:12,20 109:13 |
| 153:13 163:22 | efficiency 249:22 | emptying 87:9 | 114:12 172:3 |
| 195:8 197:24 | efforts 261:13 | enclosed 80:15 | environment 77:7 |
| 202:23 205:18 | eight 17:22 18:4 | 230:16 | 78:18,20,20,23 |
| 208:5 214:4 | 115:7 133:6 | enclosure 77:4 | 79:7,11,12 80:1 |
| effective 24:8,16 | 212:15 235:18 | 78:12 | 82:12 90:22 107:3 |
| 29:5,13,15 32:12 | 274:15,16 | enclosures 76:21 | 162:24 193:15 |
| 35:15 38:2 42:18 | eighth 180:3 | 77:18 78:6 80:23 | 204:6 210:5,7 |
| 42:20 45:19 47:8 | eighties 25:8 54:9 | 81:18 82:10,21 | 230:16 |
| 60:8 61:19 62:7 | 57:4 | 163:7 | environments |
| 62:13,14 68:12 | eisenberg 2:10 3:6 | ends 43:23 | 13:6 29:11 79:17 |
| 91:21 112:16,17 | either 61:8,15 | engaged 27:3 | 79:21 81:2 115:24 |
| 112:24 113:10 | 69:22 102:23 | england 168:8,10 | 116:7 |
| 123:9 125:2 | 182:9 200:4 | enjoyed 118:9 | equal 81:10 |
| 129:17 142:9 | 239:24 | entered 138:3 | 192:15,16,17,19 |
| 151:3 179:1 | elaborate 177:2 | entering 30:17 | 193:4 204:10 |
| 182:10 191:13 | 227:15 229:22 | 91:21 104:16 | 206:13,14 209:5 |
| 194:3,14 256:16 | 230:3 257:5 | 105:3 107:12 | 231:20 |
| 276:23 | elderly 18:4 | 138:2 | equalize 192:10 |
| effectively 112:8 | electric 111:23 | entertainment | equally 206:16 |
| 137:4 246:22 | 115:6 | 140:17,21 142:2 | 208:24 266:18 |
| effectiveness | electrician 115:4 | 142:15,21,23 | equipment 49:16 |
| 45:21 69:11 230:1 | electromagnetic | entire 30:21 76:15 | 57:3 64:19 77:6 |
| effects 26:7 157:13 | 150:23 151:2,11 | 89:9 102:21,23 | 77:14 78:22 81:1 |
| 189:1,2 208:9 | 164:3,16 | 108:13 137:13 | 113:19 169:14 |
| 261:17 | | 149:13 163:10 | 170:3,4 185:2,15 |

[equipment - expert]

| | | | |
|--------------------|--------------------|-------------------|--------------------|
| 185:16 | everybody 172:12 | 235:20 273:15 | 279:22,23,24 |
| equipped 214:11 | 172:16 | 274:15 | exhibits 8:11 32:9 |
| errata 280:1,8 | everyday's 239:14 | execute 167:11 | 52:13 73:2 171:8 |
| error 81:9,15 89:1 | evidence 31:9 | exhausted 215:21 | 187:6 199:12,13 |
| 93:14,15 94:8 | 35:18,18 36:18 | exhibit 8:14,18 | existence 71:11 |
| 96:14 | 63:2 90:19 120:14 | 9:12,14 11:3,10 | exits 29:13 |
| escape 39:3,21 | 151:2 170:1 | 14:10,14,16,18 | expect 15:20 82:20 |
| 41:21 165:11 | 188:14 198:3 | 15:5,7,9,13,17,21 | 82:22 91:7 127:11 |
| 225:16 230:17 | 203:14 216:3 | 25:11,14 29:1 | 202:15 206:5 |
| 259:2 261:10,12 | 218:19,20 228:21 | 35:22 48:23 52:16 | 208:6 214:8 |
| escaped 259:14,22 | 229:12 230:7 | 52:20 53:6,16 | 219:21 230:16 |
| 261:15 271:15,16 | 242:13 245:3,10 | 58:5,5 72:23 | 253:20 254:2 |
| 271:24 272:1,18 | 266:24 | 74:17,20 75:3 | 259:24 |
| especially 157:9 | evolutionary | 76:1,2 93:19 | expected 139:4 |
| 176:11 238:11 | 46:17 117:10 | 97:19 117:22 | 261:3 |
| 271:3 | exact 90:5 131:21 | 118:14 131:11,14 | expecting 266:7 |
| essentially 19:20 | 177:11 | 131:18 139:21 | expelled 225:21 |
| 33:10 120:12 | exactly 60:1,21 | 140:2,7 143:19 | expellency 220:21 |
| establish 210:24 | 70:22 71:23 72:8 | 144:1,2 145:20 | expeller 204:13 |
| established 154:3 | 78:4 84:7,17 | 146:5 147:9,10,11 | 219:15 220:8 |
| 167:22 168:2 | 107:16 110:20 | 147:12 148:12,14 | 263:8 |
| 169:21 172:7 | 114:2,20 191:2,6 | 148:16,21 152:17 | expellers 30:7 |
| estimate 133:11 | 193:10 209:12 | 152:19,23 158:22 | 271:11 |
| 245:2 | 214:7 221:10 | 161:7,9,13,20 | expelling 182:10 |
| estimated 244:22 | examination 1:16 | 163:10,13 164:2,5 | expensive 113:21 |
| et 3:9,9 8:24,24 | 4:13 276:1 278:3 | 171:11 172:19,23 | experience 70:3 |
| 9:21,22 25:13,13 | 279:2 | 173:10,15 174:6 | 77:5 103:6 105:9 |
| 62:3 69:7 157:20 | examined 4:12 | 175:18,21 178:9 | 105:14 129:9 |
| 158:7 186:6 | example 168:4 | 178:10,14,19 | 158:9 200:13,15 |
| 206:23 | 213:7,21 | 184:8,11 195:16 | experiment |
| ethology 77:6 | examples 57:2 | 195:18,22 198:10 | 114:15 196:23 |
| europe 116:2 | exceed 189:6 | 198:11 232:11,17 | 230:21 238:24 |
| european 116:1 | exceeding 176:15 | 236:22 237:7,16 | 242:12 260:9,15 |
| evaluate 11:14 | exception 33:13 | 237:17,18 247:8,9 | 261:8 |
| 159:6 | 202:17 | 247:21 248:10,13 | experiments |
| evaluated 26:16 | excess 64:21 197:8 | 248:17 250:9,11 | 259:16 |
| evaluation 172:20 | 271:9 | 250:15 252:16 | expert 5:19 6:4 |
| evened 229:4 | excuse 12:16 34:5 | 264:8 276:4 279:9 | 9:8,9,20,23 10:2 |
| event 127:11,23 | 36:24 86:9 91:5 | 279:10,11,12,13 | 11:18 24:21,23 |
| eventually 22:24 | 104:24 125:24 | 279:14,15,16,17 | 94:1,5 102:13 |
| 40:18 97:4 98:3 | 215:8 233:7 | 279:18,19,20,21 | 104:13 |

[expertise - figure]

| | | | |
|---------------------------|----------------------------|---------------------------|---------------------------|
| expertise 12:4 | faced 263:15 | familiarity 25:3 | feedback 39:10 |
| experts 26:15 71:3 | faces 126:9 | family 161:2 | feeding 154:12 |
| explain 41:4 43:11 | facilities 17:22 | far 28:21 63:2 | 181:5 217:6,18 |
| 59:11 60:15 71:8 | facing 72:9 109:13 | 77:3,8 78:11,15 | feeds 117:10 |
| 90:17 181:14 | 109:21 114:10,11 | 83:16 91:15 107:7 | feel 46:23 77:2 |
| 244:13 | fact 10:12 45:12 | 110:1 117:5 | 78:10 103:13 |
| explaining 41:2 | 82:11 90:10 | 119:23 142:15 | 114:6 201:12 |
| 190:18 | 125:12 130:4 | 160:2 166:2 178:3 | feet 123:3,7,18 |
| explanation 90:15 | 142:22 168:4,21 | 191:12 197:23 | 125:13,22 126:3 |
| 229:21 | 168:23 169:20 | 224:24 228:15 | 130:4,11 131:4 |
| explore 154:7 | 170:23 193:3 | farm 16:19 87:8 | 133:12,16 137:9 |
| export 93:19 | 197:3 204:4,19 | 101:23 102:17 | 137:14 162:22 |
| expose 81:11 | 217:24 220:11 | 108:13,21 111:14 | 176:13,16,21 |
| exposed 226:9 | 227:23 240:10 | 111:16,17 112:6 | 179:15,16 189:6,9 |
| 263:7 | 245:11 253:24 | 201:8 223:19 | 189:20 217:14 |
| exposing 104:9 | 259:2 262:18 | 245:21,23 263:23 | 228:1,1,1 243:14 |
| exposure 38:10 | 263:22 266:9,21 | farmingham | 244:4,20 245:4,20 |
| 39:8,15 165:10 | 270:6,13 271:1 | 168:19 | 245:23 246:6,14 |
| 171:2 183:10 | factor 181:15 | farther 60:9 84:21 | 246:24 247:15 |
| express 10:10 | 192:10 | 244:18 263:17 | 249:12,23 250:7 |
| expressed 10:20 | factors 188:15 | farthest 179:3 | 254:3 262:19 |
| 119:17 | facts 14:11,19,23 | fashion 151:24 | feinstein 9:4 |
| expressly 77:13 | 15:1,4 | faster 28:23 | felt 119:16 138:3 |
| extending 108:2 | factual 168:16 | 251:17 | feuerstein 9:5,6 |
| extends 263:17 | 169:11 | fat 169:2 | 33:2,6 118:22 |
| extension 110:12 | faculty 28:19 | fats 168:24 | 176:19 196:9 |
| 110:15,18 | fail 40:8 | favor 267:8 | 240:20,23 244:23 |
| extensively 116:3 | failed 68:9 225:20 | 268:12 | 248:24 249:8,8 |
| extent 12:21 24:24 | 254:7 | favorable 154:1 | 252:18 276:5 |
| 202:7 | fair 7:6,22 39:22 | 167:24 169:22 | feuerstein's 204:1 |
| exterminate | 47:14 102:24 | 172:9 | field 25:2 26:15 |
| 167:23 169:21 | 191:7 192:5 193:7 | favoring 266:16 | 27:9 32:23 37:3 |
| 172:8 | fairly 200:24 | favorite 138:1 | 77:5 80:19 90:21 |
| extra 146:10,12 | fake 36:3 37:19 | features 250:20 | 102:14 210:3,18 |
| extreme 128:19 | fall 87:11 209:4,14 | february 248:24 | fields 20:24 21:3 |
| extremely 191:19 | fallen 87:10 | feces 213:13 | fifth 215:10 |
| f | false 168:12 | federal 249:15 | fighting 217:3 |
| f 4:20 9:21 | falsifying 49:19 | feed 154:8 215:22 | figure 58:6 79:12 |
| fabric 70:13 | familiar 16:6 | 216:4,10 217:16 | 89:19 90:3 134:5 |
| face 39:10 217:4 | 24:18 49:5 165:23 | 218:4 | 190:3 238:4 |
| | 183:18 200:19 | | |

[figured - form]

| | | | |
|----------------------------|---------------------------|----------------------------|--------------------------|
| figured 199:12 | 50:5 73:6,9,19 | 270:3 | 221:14,19,20 |
| figures 63:17 | 76:10,12,18 96:24 | floored 107:3 | 223:10,12,14,21 |
| files 160:3 | 98:3 107:4,12 | flooring 177:4,6 | 224:11,14,18 |
| filled 176:12 | 112:15 123:2 | floors 30:2 31:6,16 | 229:3 245:15 |
| final 166:20 | 127:17 131:24,24 | 256:14 259:10 | 261:4 262:4 268:6 |
| 235:20,22 272:8 | 140:6 150:22 | 268:23 269:24 | 268:7 |
| 272:12 273:18 | 153:11 162:4,8 | fluctuate 266:5 | foods 17:24 18:2 |
| finally 87:21 89:16 | 167:16 174:2 | fluctuated 268:3 | 127:18 128:5 |
| find 20:3 31:3,5 | 179:20,24 181:15 | fluctuating 59:19 | foot 133:6 227:7 |
| 37:12 39:5 45:6 | 181:24 182:3 | fluctuation 60:4 | footage 137:21 |
| 46:19 48:1 79:5 | 190:9 191:15 | 239:13 | 246:20 248:6 |
| 82:15 86:21 97:6 | 206:18 224:7 | fly 102:22 | 249:16,20 |
| 98:6 100:6,11 | 251:23 267:5 | focal 22:9 | force 50:13 51:8 |
| 103:23 104:4 | 270:17 273:16 | focus 37:11 38:8 | 68:6 69:12 70:14 |
| 108:15 123:20 | firsthand 126:23 | 41:3 84:9 112:21 | 110:6 116:24 |
| 127:13,23 139:18 | fisher 2:2 3:18 | 125:21 143:24 | 180:17 255:5 |
| 143:16 159:2 | five 26:22 69:8 | 144:5 257:4 | 257:11 269:1 |
| 160:10,13 165:12 | 162:22 168:12 | 265:17 | forced 104:7 |
| 166:4 167:8 169:1 | 237:15 252:8,12 | focused 265:14 | 229:11 |
| 189:5,5 191:20 | 272:6 274:16 | focusing 268:10 | forces 116:14 |
| 195:5 236:21 | fix 220:1 | follow 98:1,8 | 216:24 222:16 |
| 245:15 256:9 | flash 202:4 270:21 | 100:11 272:8 | foregoing 278:6 |
| 257:9 260:8 | flavor 24:1 | followed 98:2 | foreign 40:15 |
| 261:12 270:11 | flavoring 24:15 | 119:13 120:15 | forgive 44:12 |
| 271:9,13 273:7 | flavors 24:7 | 210:15 | forgotten 87:18 |
| finding 89:1,3 | flawed 214:9 | following 8:23 9:1 | form 12:8 14:2,13 |
| 227:24 238:20 | 241:7 242:11 | 98:15 100:4 | 27:16 29:17 30:23 |
| 256:6 274:11 | 258:11 271:7 | 115:13 120:20 | 33:5 39:17 40:10 |
| findings 49:2,12 | fleet 252:8,13 | follows 4:12 | 41:15 45:2,23 |
| 51:12 152:7 | flip 25:14 74:1 | food 31:8 32:6 | 47:22 48:13 49:13 |
| fine 10:6 109:17 | 147:20 198:12 | 116:8 128:13,14 | 51:16 52:10 54:23 |
| 112:9 118:13 | flipped 212:2 | 128:20 134:23 | 56:6 57:20 62:4 |
| 135:22 185:24 | flipping 212:11 | 157:23 174:11 | 62:18 65:7,14,23 |
| 193:3 199:11 | floor 31:24 32:2 | 182:11 191:4 | 66:14 68:14 77:21 |
| 235:5 252:22 | 109:23 111:12 | 206:12,13 213:18 | 77:23 79:22 80:7 |
| finish 7:20 40:2 | 112:7,12 123:3,8 | 214:15,20 215:6 | 81:3 83:18 95:9 |
| 44:22 54:20 92:5 | 123:17 124:14 | 215:20,24 216:10 | 96:17 99:5,20 |
| 146:20 155:7 | 126:20 130:5 | 216:15,17,24 | 100:23 103:3 |
| 267:5 273:8 | 133:5 154:10 | 219:6,9,15,17,18 | 105:16 107:14 |
| first 4:11 9:10 | 178:5 223:15 | 219:20 220:2,12 | 109:2 110:9 |
| 40:23 42:16 44:8 | 258:2,5 259:9 | 220:16 221:9,11 | 114:17,20 120:10 |

[form - gather]

| | | | |
|--|---|---|---|
| 122:8,21 123:11 124:4 125:5 126:14 127:14 131:21 132:8 136:12 138:23 142:10 145:9,19 148:5 149:18,23 154:17 157:5 163:14 170:24 175:5 177:8 183:8 188:18 194:5 195:1 204:8 207:4 211:23 212:6,22 216:19 217:21 218:17 219:11 220:6,14 222:8 230:12 232:3 233:14 239:19 240:1 241:3,13 242:6,19 243:21 244:10 245:6 246:7 251:21 255:24 256:22 257:19 258:17 260:16 formal 12:14,16 275:20 formally 5:4 format 167:3 formats 156:4 formica 134:24 forming 14:11,19 15:4 64:3 forth 64:21 68:19 116:4,8 117:9 202:20 203:17 262:20 268:3 found 15:20 49:18 86:9,10,14 87:13 87:21 109:20 114:21 120:16 | 123:14,16 124:8 126:21 141:20 157:20 159:9,10 159:11,15 160:6 166:11 171:19 217:24 231:6 238:19 272:19 273:1 275:4,6 foundation 14:13 27:16 29:17 39:17 40:10 41:15 45:23 49:13 57:20 65:7 65:14,23 66:15 81:3 96:17 99:5 99:20 100:23 103:3 105:16 114:17 126:14 127:14 138:23 142:10 145:19 149:23 154:17 170:24 183:8 188:18 194:5 195:1 211:23 212:6 216:19 217:21 219:12 220:14 222:8 230:12 233:14 239:19 240:1 241:3,13 242:6,19 243:21 245:6 246:7 255:24 257:19 259:15 260:16 four 24:8 91:24 97:14 112:6 123:3 123:7,18 125:13 125:21 126:3 130:4,11 131:4 133:12,16 181:4 227:6 235:18,20 274:15 | fourth 16:8 17:8,9 215:9 247:10,11 270:19 foxes 117:12 fraction 180:3 fraenkel 2:10 3:6 free 76:22 77:2 78:11 102:17 113:1 freely 192:14 freemoving 172:2 frequencies 43:1 43:21 44:13,14 55:3 56:8,23 59:6 59:18 61:7,10 95:23 98:20 162:16 165:19 166:18 170:5,8 171:13 173:4,21 179:7 185:5 195:5 201:3,16 202:9 254:1 frequency 25:6 30:1 36:8 44:2 46:15 49:17 50:8 51:5,6,15 57:17 59:16,19,20,21 60:1,6 61:15 62:16 63:7 95:9 95:17,19,21 99:8 113:22 117:13 162:23 170:11 171:3,20 191:21 201:10 263:16 frequent 77:23 fried 54:9 friends 79:4 front 15:14 133:22 142:22 146:7 162:5 167:16 213:9,17 214:1,6 | 231:9 234:6 260:13 261:4 262:1 263:9 264:18 265:4,20 266:10,16,22 267:8 268:7,12 fry 163:23 fte 249:15 full 38:10 61:15 96:2 104:10 157:19 159:17 160:11 162:8 208:17 fully 28:19 72:13 228:19 254:2 fulsome 207:3,5 function 24:24 213:6 264:21 functioning 220:20 functions 164:22 fundamental 40:4 furniture 85:10,13 85:14 141:17,23 142:7 268:22 furry 23:2 further 266:11 277:23 g g 19:5 gail 1:16 2:23 278:1,24 gain 104:9 gamut 246:15 gap 67:21 garbage 223:23 224:2,9,11 gard 23:13,14,18 garlic 24:7 gather 48:7 |
|--|---|---|---|

[geared - group]

| | | | |
|---------------------------|---------------------------|---------------------------|--------------------------|
| geared 30:14 | glass 70:10 140:17 | 253:13,20 255:22 | google 159:23 |
| geese 19:6,10 | 142:17,20 | 255:24 256:22 | googling 160:8,11 |
| 20:18,19,22 21:8 | gnaw 224:15 | 257:20 262:5 | goose 19:20 20:16 |
| 22:7 24:16,19 | gnawed 86:21 | 263:8 266:11 | 23:5 24:15 162:22 |
| gene 116:11 | go 22:10 27:17,23 | 272:10,14 273:11 | goosebuster 19:4 |
| general 28:5 42:1 | 27:24 29:18 30:24 | 273:16 | 22:17 |
| 87:7 99:13 184:3 | 36:18 40:11,13 | goes 79:4,6 96:4 | gould 69:7,7 |
| 273:2 | 45:2,5,9 46:4,6,18 | 212:17 271:1 | 157:20 159:9 |
| generally 27:9 | 47:9,22 59:5 62:4 | going 5:9 6:18 8:2 | 181:22 255:6 |
| 68:9 | 66:1,15 68:14 | 8:9 14:4 46:9,11 | gould's 181:21,23 |
| generated 104:8 | 71:2 79:1,22 | 46:16 50:4 59:6 | grab 118:13 264:8 |
| generations | 80:17 81:4,12 | 60:4 66:8 72:11 | grabbing 219:8 |
| 115:23 | 91:11 95:6 96:17 | 74:2 75:17 81:22 | gradually 101:23 |
| generator 182:9 | 99:21 106:22 | 84:12 91:18,23 | grain 20:24 |
| generators 180:24 | 113:21 117:23 | 102:16 103:10 | 173:19 176:12 |
| 181:1 | 120:23 122:8,21 | 123:14 124:13 | 184:1,2 |
| genetically 116:10 | 123:11 124:5 | 130:10 139:9 | grams 215:12 |
| germane 164:16 | 126:15 127:15 | 143:18 144:5 | granules 24:1 |
| getting 57:4 82:2 | 128:24 129:19 | 151:23,24 155:10 | grape 24:15 |
| 90:1 197:23 | 141:14,15 142:11 | 168:4 169:9 170:4 | graph 86:22 89:18 |
| gift 106:4 | 146:24 149:13 | 176:21 180:3,19 | 89:24 94:23 |
| give 11:16 51:21 | 150:2 154:19 | 184:6 185:14 | graphics 89:10 |
| 53:23 78:24 100:8 | 157:2,5 158:12,24 | 195:6 197:13 | graphs 88:17 89:4 |
| 117:15 163:8 | 159:8 165:3,13 | 198:6,9 199:11 | grass 24:17 |
| 164:22 165:5 | 168:24 177:9 | 213:22 214:20 | gray 201:24 202:4 |
| 171:20 173:12,13 | 181:10 182:21 | 216:3,16,17 217:1 | great 16:6 115:11 |
| 187:21 195:11 | 183:8 189:3 195:2 | 217:6 219:9 228:6 | 140:13 146:14 |
| 213:1 216:22 | 198:6 204:8 208:6 | 229:2,22 246:16 | 155:13 160:17 |
| 235:10 257:15 | 209:4 211:24 | 273:24 274:14 | greater 27:14 |
| 269:8 | 212:7 213:7,8,20 | 275:20 | 181:17 |
| given 98:6 104:15 | 215:22 216:10,13 | good 4:15,16 | greatly 68:19 |
| 106:3 117:8 156:5 | 216:20 217:4,22 | 51:21 58:2 67:19 | greaves 171:24 |
| 196:21 243:24 | 218:3 219:12 | 68:24 70:2 78:24 | grew 246:13 |
| 244:23 262:3 | 222:23 223:10 | 87:3 105:5 116:21 | griddle 111:23 |
| 270:16 272:7 | 224:21 225:9 | 118:7,8 128:4 | ground 6:10 125:3 |
| 278:10 | 227:18 228:3 | 145:11 154:6 | 125:22 133:16 |
| giving 7:18 166:14 | 230:13 231:12 | 185:22 191:16 | group 23:24 26:13 |
| 166:15 | 232:16 233:15 | 209:3 249:13 | 120:17 234:1 |
| glad 244:3 | 236:20 237:7,17 | 251:15 258:22 | 264:17,17,22 |
| glahn 178:9 | 238:10 241:4 | 264:1 | 265:8,9,12,16,19 |
| | 243:12 245:7,15 | | 265:20 266:8,16 |

[group - hits]

| | | | |
|--------------------------|---------------------------|---------------------------|---------------------------|
| 267:6 268:6,10,12 | hallways 234:5 | 25:13 118:21 | 125:15 126:2,12 |
| groups 268:9 | halves 35:16 | 122:2,3 130:24 | 130:19 133:5 |
| guess 18:12 26:4 | hand 101:21 | 131:3 139:12,22 | 134:18 136:20 |
| 47:24 48:5 200:12 | 136:18 193:12 | 140:12,15 | 137:6 143:7,13 |
| 234:21 240:3 | 198:9 278:19 | haul 255:7 | 145:12 148:9,22 |
| 263:4 | handed 178:10 | hauser 1:11 5:7 | 149:3,6 |
| guildenstern | handle 24:13 | head 8:1 38:4 | heights 112:5 |
| 212:10 | hands 24:4 143:18 | 63:11,14 | 123:24 |
| gypsum 70:2 | handy 74:18 97:20 | heading 136:19 | held 3:5,11 22:17 |
| h | 147:11 | headlights 251:17 | 28:5 185:1 |
| h 4:20,20 30:6 | hanging 112:13 | heads 212:4,12 | hell 79:13 270:14 |
| 50:10,11,12,14 | happened 91:14 | hear 42:9 43:16,23 | help 52:3,12 |
| 189:3 279:7 | 109:14 205:20 | 43:24 44:6,9 | 143:16 156:16 |
| habit 230:6 | 211:19 228:17,23 | 46:11 63:12 65:2 | helpful 137:2 |
| habitat 167:24 | happening 98:24 | 66:5 78:3 93:11 | 187:7 190:15 |
| 169:22 172:9 | happens 183:15 | 98:23 116:20 | helping 143:3 |
| habituate 39:5 | 206:17,19 | 117:8,11,12 | helps 134:1 175:11 |
| 182:18 230:16 | happy 131:1 | 151:17 160:21 | 263:1 |
| habituated 40:15 | 227:15 230:3 | 161:3 202:11 | hereof 280:9 |
| 183:5 229:4 230:9 | 267:4 | 230:20 233:20 | heretics 169:9 |
| habituating | harbor 256:11 | 252:10 257:22 | hereto 278:16 |
| 191:15 | harborage 206:15 | 258:1 262:11,15 | hereunto 278:18 |
| habituation 38:21 | 255:1,15,20,22 | 262:22 | hertz 162:20 |
| 38:23 39:2,13 | 256:4,18,19 | heard 49:9 117:15 | hide 269:2 270:4 |
| 40:5,6,9 41:2,3,4,5 | 257:14,16 259:3,5 | 183:23 184:5 | 275:4 |
| 41:13 42:5 155:12 | 269:4 270:8,8 | hearing 36:8 | hiding 31:3 |
| 165:11 183:13 | harborages 269:3 | 43:15 44:10,11 | high 40:17 54:11 |
| 222:16 229:15 | 269:19 | 46:9,18 59:7 | 60:9 108:5 112:8 |
| 257:11 | hard 7:5,17 68:5,8 | 202:8 203:16 | 112:10 113:7 |
| hair 16:16 39:9 | 69:19 70:2 72:9 | 221:4 230:23 | 135:12 162:23 |
| half 60:10 107:2 | 107:3,3,9 113:13 | 251:13 | 214:6 218:4 |
| 108:4 186:1 | 113:15 177:3,4 | hearsay 105:19 | 228:14 |
| 190:22 215:6,8,16 | 231:3 238:4 | 158:11 | higher 123:19 |
| 252:8,12 263:15 | 244:17 263:5,14 | heater 115:7 | 135:1 177:19,24 |
| hall 73:21 74:11 | 264:7 | heaters 106:16 | 180:18 209:2,2 |
| 96:22 104:7 108:3 | harder 124:2 | heavily 271:7 | highest 51:7 |
| 110:14 124:18 | harm 197:2,22 | heavy 70:3 109:8 | highly 39:3 116:12 |
| 263:23 | harmful 183:12 | 109:10 255:8 | 212:17,19 253:16 |
| hallway 67:22 | harming 40:21 | hedging 64:15 | hired 47:20 |
| 104:20 106:18 | hart 1:4 3:9 8:24 | height 110:24 | hits 70:14 |
| 264:2 | 8:24 9:2,3,21 | 111:9,12 112:3 | |

[hitting - immaterial]

| | | | |
|--------------------------|--------------------------|--------------------------|----------------------------|
| hitting 113:15 | 108:21 111:1,3,15 | 219:16,24 222:6 | i |
| hold 22:18 68:6 | 111:16,17 112:6 | 222:20 225:3 | ibm 57:6 |
| 109:21 141:15 | 116:1 122:11 | 226:3,15 229:7 | idea 20:19 60:16 |
| 171:7 216:5 | 135:11 201:8 | 230:1 243:8,19 | 87:7 105:5 117:1 |
| 271:13,17 272:23 | 219:5,6,7,8,18,21 | 245:1 246:20 | 250:5 |
| 272:23 | 220:2,13,17 222:7 | 253:9 276:22 | identical 154:7 |
| holding 136:21 | 222:10,21 223:2,7 | 277:4,10,12 | 155:1 191:2 |
| holds 190:4 | 223:10,14,19 | howell's 47:2 | identification 8:15 |
| 202:13 | 224:7 225:7,12 | 183:15 185:17 | 52:17 131:15 |
| hole 106:11 | 226:4,8,16,24 | hub 8:1 26:1 53:1 | 140:3 148:17 |
| holes 52:6 | 245:16,20,21,21 | 67:13,17 73:24 | 152:20 161:10 |
| home 21:9 87:17 | 245:24 246:12 | 94:19 118:19 | 164:6 172:24 |
| 127:23 154:5 | 256:10,17 257:10 | 123:5 125:11 | 175:22 184:12 |
| homeowner | 257:18 258:2,9 | 132:3 138:22 | 195:19 248:14 |
| 104:23 105:1,2 | 259:6 263:23 | 142:4 147:7 162:7 | 250:12 |
| 106:20 108:8 | houses 31:15 | 162:10 186:8 | identified 132:13 |
| 110:7 | 246:16 255:16,22 | 206:24 234:13 | 145:23 188:16 |
| homeowners | 257:15 258:20 | human 43:15 | 197:12 |
| 105:10 | 259:2,4,8,10,11,13 | hundred 66:22 | identifies 133:1,10 |
| homes 83:9,16,22 | housing 188:24 | hungry 223:9 | 140:16 |
| 84:3 126:18 | 191:5 246:13 | hunt 45:9 | identify 3:16 4:3,5 |
| 128:19 | housings 56:16 | hunting 87:24 | 16:15 37:14 52:14 |
| honestly 20:8 | howard 166:8 | 117:13 | 104:16,24 105:2 |
| 101:19 | 171:11 | hypertrophy | 141:11 145:11 |
| hoped 118:9 | howell 1:11 11:21 | 171:4 | 236:16,18 |
| hopefully 139:18 | 12:1,19 13:13 | hypothesis 221:10 | identifying 138:19 |
| 194:11 | 29:5 32:11 33:15 | hypothetical 81:4 | ignorance 44:12 |
| hoping 48:7 196:8 | 33:17 42:20 43:7 | 99:21 124:5 125:6 | ignore 38:17 39:16 |
| 198:12 | 44:23 47:7 51:14 | 126:15 128:24 | ignored 39:1 |
| hot 115:6 | 55:10,16 56:5,18 | 129:19 142:11 | illinois 1:18,20 |
| hour 15:12 117:6 | 57:10,15,17 62:1 | 177:9 181:9 183:7 | 2:12 3:7 18:13 |
| 186:1 | 62:11,12 105:21 | 194:6 195:2 212:7 | 278:2,19 |
| hourly 18:20 | 110:11,23 113:2 | 216:20 219:12 | illness 160:18,19 |
| hours 237:8 | 114:16,21 115:1 | 220:18 222:22 | image 52:23,24 |
| house 14:3 17:1 | 123:7 129:16 | 224:20 227:18 | 247:17,19 |
| 29:16 30:8,17,22 | 137:3 144:21 | 228:9,10 242:7,20 | imagine 71:5 |
| 30:23 31:2,5,8 | 145:9 152:10 | 243:11,22 253:12 | 160:12 |
| 59:3 73:21 87:8 | 173:24 174:13,15 | 255:23 256:21 | imagined 98:7 |
| 91:22 101:14,23 | 176:17 185:15,16 | 257:20 258:18 | imbalance 207:21 |
| 102:11,17 104:9 | 187:9,14,24 188:6 | 260:2,17 262:5 | immaterial 98:10 |
| 105:22,23 108:13 | 200:22 201:14 | | 98:18 99:3,19 |

[immaterial - instructions]

| | | | |
|---------------------------|--------------------------|---------------------------|----------------------------|
| 130:12 | 149:2 | indicating 67:2 | 147:10,12 252:15 |
| immediately 85:4 | includes 46:13 | 179:5 | initially 28:22 |
| impact 197:18 | including 26:23 | indication 236:3 | 39:14 97:10 |
| impacted 69:1 | 69:2 73:2 271:20 | 239:7,8,13 | injury 196:16 |
| implied 58:18 | 275:4 | indications 233:17 | 198:3 |
| implies 66:12 | incompetence | indirectly 278:16 | insects 12:2,9,20 |
| 183:2 | 242:5 | individual 46:10 | 13:7,14,17 16:9 |
| imply 226:23 | incomplete 81:4 | individually | 17:9 21:13,18 |
| 231:22 238:22 | 99:21 124:4 125:5 | 166:17 | 37:24 38:2 145:17 |
| 239:2 265:5 | 126:15 128:24 | individuals 200:17 | 151:19 188:11 |
| implying 65:12 | 129:18 142:11 | ineffective 45:19 | inside 80:22 82:21 |
| importance 90:17 | 177:8 181:9 183:7 | 68:23 150:18 | 100:20,22 108:22 |
| important 6:17 | 194:6 195:2 212:7 | 214:5 251:2 | 108:23 127:3 |
| 28:8 39:2 62:16 | 216:20 219:11 | ineffectiveness | 129:13 219:6,7 |
| 63:1 82:1 88:10 | 222:22 224:20 | 45:21 | 224:13,14 255:12 |
| 102:1 169:4 | 227:17 242:7,20 | inefficient 165:16 | 255:16 256:5,17 |
| 175:15 183:14 | 243:11,22 253:12 | infestation 105:1 | 257:14,16,17,22 |
| 200:16 | 255:23 256:21 | 127:12,24 130:6 | 258:1 259:12 |
| importantly 27:11 | 257:20 258:6,17 | 219:22 220:1,12 | 268:16 269:5,9 |
| 263:6 | 260:2,17 262:5 | infestations 21:10 | installed 154:11 |
| importing 203:11 | inconsistencies | 105:10 | instance 71:22 |
| impossible 30:7 | 75:14 | influence 26:20 | 94:10 130:3 |
| 90:9 166:20 168:5 | incorrect 89:18 | 204:6,12 | 221:15 252:3 |
| 176:11 | 93:10 94:1,13 | influenced 217:19 | instances 215:5 |
| impression 122:12 | increase 175:10 | information 9:10 | institutions 156:15 |
| impressive 101:12 | increasing 175:12 | 26:20 28:15 32:21 | instruction 97:22 |
| improbable | indicate 31:10 | 37:18 39:12 45:10 | 98:1,2 99:2,18 |
| 212:17,19 | 96:15 117:7 | 51:22 60:21 64:8 | 143:5 |
| improve 123:13 | 120:16 121:12 | 75:18,20 89:17 | instructions 50:17 |
| inaccurate 68:3 | 152:7 154:23 | 103:17 131:22 | 53:13 100:4,10,11 |
| inappropriate | 221:22 232:5 | 157:22,24 162:20 | 100:14,15,19,20 |
| 257:15 | 247:1 253:2 | 163:8 165:8 | 101:3,8,17 102:8 |
| inbred 116:12 | 276:14 | 166:16 173:21 | 103:2,8,11,15 |
| inbreeding 202:20 | indicated 33:2 | 174:14 240:8 | 113:2 119:14 |
| incapable 125:14 | 93:1 94:20 96:11 | 245:1 276:13 | 120:15,18,20 |
| 125:23 | 157:21 192:5 | informational | 143:8,9,16 145:8 |
| inch 67:21 69:14 | 204:21 247:3 | 163:2 | 145:16,24 146:8 |
| inches 32:2 111:11 | 280:8 | infrasound 43:21 | 146:18,22 147:6,9 |
| 112:7,11 113:6 | indicates 153:12 | ingest 24:20 | 147:16,24 148:3 |
| included 20:4 | 154:18 165:15 | initial 25:15,17 | 149:1 152:11 |
| 32:16 44:23 69:9 | 193:6,9,11 | 93:18 118:14 | 247:5,7,10,13 |

[insufficient - know]

| | | | |
|-------------------------------------|---------------------------|-----------------------------|-----------------------|
| insufficient 44:21 227:13 | invalidates 264:20 | k | 135:7 136:10,15 |
| insulated 259:13 | invasion 172:2 | keep 30:17 32:5 | 136:23 137:4,7,16 |
| insulation 68:18 | invasive 268:19 | 39:12 59:3 74:18 | 137:18,21 138:4 |
| intellic 33:24 | inventor 249:9 | 74:18 81:20 128:5 | 138:11 141:6 |
| intellitec 34:1,2 | involved 22:21,23 | 130:1 147:11 | 224:1,3 245:22 |
| intend 103:11 | 23:6,9,18 24:14 | 168:6,15 170:10 | 246:6,11 |
| intended 81:24 | 47:14 54:14 | 199:12 226:8 | kitchens 129:8 |
| intending 100:1,2 | involving 21:10,20 | 227:4 228:7 | 246:12,12,14 |
| intense 24:6 | 21:22 22:15 | 240:14 | knew 218:22 |
| intensities 165:19 | irrelevant 151:5 | keeping 24:16 | know 5:3 6:21 |
| 166:18 | irritation 59:4 | 88:2 108:5 113:1 | 12:13 15:11,16 |
| intensity 36:7 | issue 45:14 55:18 | 263:24 | 16:12 27:19 32:22 |
| intentionally | 56:3 130:13 | keeps 23:2 40:16 | 37:17 38:16 40:24 |
| 66:18 | 174:18 | kept 39:11 87:23 | 42:9 46:12 47:12 |
| interaction 190:6 | issues 132:13 | 92:1 229:2 264:18 | 48:3,17,23 50:3 |
| 197:21 217:1 | 249:15 | 265:20 | 51:1 57:8 61:3,4,6 |
| interactions 18:1 | j | keys 37:13 89:7 | 61:9,11,14 63:13 |
| interest 139:12 | january 1:21 3:3 | kill 21:8 162:20 | 63:18 79:6,12 |
| interested 98:4 | 278:20 | 163:20 167:23 | 83:15 85:18 90:20 |
| 101:13 278:16 | jays 87:16,22 | 169:3,22 172:8 | 90:21 92:2 93:17 |
| interfere 197:6 | jewelry 141:18 | 190:5 251:16 | 100:2 101:21 |
| interfering 134:18 | joanne 1:4 3:9 9:3 | killed 87:24 | 102:12 103:9,9,14 |
| internal 163:23 | 118:21 122:2 | killling 20:19 189:7 | 105:19 108:15 |
| internet 28:15,22 | 139:21 140:12 | kilohertz 43:6 | 109:8 112:1,4,12 |
| interrupt 7:18 | job 14:8 | 63:8,9 165:2,2,3,6 | 113:16 116:22 |
| 35:8 57:1 71:15 | jobs 18:6 | 170:14,16,17,20 | 117:12 126:23 |
| 90:23 95:19 | journal 26:13,23 | 171:3,14,15,15,16 | 128:9,10,12,13,17 |
| 141:20 | 87:23 162:1 | 171:17,18 | 131:8 135:2 137:9 |
| intertek 34:3,5 | 165:23,24 166:22 | kind 50:1 129:8 | 137:20 142:15 |
| 187:13,15 189:14 | 167:4 168:8,8,10 | 130:12 135:16 | 144:11 146:8 |
| 198:13 200:19 | 183:18,19,21 | 141:23 162:1 | 147:1 149:3,10,21 |
| 234:12 236:19 | 184:15 | 176:23 | 150:12 151:21 |
| 240:19 276:7 | journals 26:23 | kindly 148:13 | 154:18 155:10 |
| introduce 5:4 | 156:12 166:5 | kinds 17:24 116:3 | 157:19 159:8 |
| introduced 192:14 | judge 6:15 165:20 | 240:12 | 161:16 163:6 |
| introduction | 166:16 202:3 | kitchen 91:24 | 164:10,12 165:12 |
| 76:13 | 241:18 | 104:19,21 107:21 | 165:13,18 166:17 |
| intrusive 39:4 | july 160:22 198:14 | 108:19 111:20,21 | 166:23 171:21 |
| invalid 204:21 | jury 6:15 | 111:22 112:5 | 173:3,24 177:11 |
| | | 125:17 132:21 | 177:13 178:10 |
| | | 134:5,6,9,11,13,22 | 183:13 184:24 |

[know - length]

| | | | |
|--------------------------|-------------------|-------------------------|---------------------------|
| 187:5 188:5 | 73:16 76:2,6,8 | 233:19 235:14 | larger 83:16 |
| 190:14,18 196:4,9 | 78:1 80:4,12 | 237:3,5,22 238:12 | 176:20 227:8 |
| 200:4,7,15 201:4 | 81:16 83:1,7,21 | 238:15 239:15,23 | 228:1,4 247:6 |
| 202:5,22 203:22 | 91:8 97:2 99:10 | 240:4 241:9,21 | 248:5 |
| 206:6 207:1,8 | 100:13,24 107:18 | 242:1,16,24 243:6 | late 56:2 87:24 |
| 215:20,24 216:2 | 109:3 110:16 | 243:17 244:2,11 | 160:18 237:8 |
| 217:12 218:15 | 114:23 118:6 | 245:18 246:18 | lavoie 178:9 |
| 219:1 225:3 230:7 | 120:22 122:13,24 | 248:9,16 250:8,14 | law 101:22 |
| 234:17,18 235:1,2 | 123:21 124:10 | 252:2 253:17 | law's 160:18,19 |
| 236:5 237:8 | 125:7 126:24 | 256:8 257:2,24 | lawsuit 5:7,10,14 |
| 239:24 240:18,21 | 127:20 128:8 | 258:7,24 260:6,20 | 13:24 276:23 |
| 242:9 244:12 | 129:5,23 131:10 | 261:5,22 262:9 | lawyer 120:1,24 |
| 245:11 246:21 | 131:17 135:22,23 | 273:10 275:8,14 | 121:1,11 |
| 250:6 251:12 | 136:13 138:16,24 | 277:18 279:4 | lay 121:20,24 |
| 253:21 257:7 | 139:20 140:5 | l | 122:6,18 149:8,20 |
| 263:7 266:5 | 142:18 145:22 | l 4:19,21 | layers 70:3 |
| 270:13 | 146:3,10,14,15 | lab 25:2 76:21 | lead 80:2 |
| knowing 213:10 | 148:8,12,19 | 77:19 78:8 79:17 | leahy 2:10 3:5 |
| 229:1,5 | 149:19 150:2,9 | 79:21 115:16,20 | learn 39:15 |
| knowledge 38:3 | 151:12,16 152:16 | 115:22 116:18 | learned 189:11 |
| 55:19 71:12 94:15 | 152:22 154:24 | 162:24 201:24 | learning 38:17 |
| 121:7,19 122:5,18 | 157:16 158:12,19 | 202:2,18,19 | lease 21:3 |
| 197:18 242:22 | 161:6,12 163:17 | label 144:13,17 | leather 142:1 |
| known 43:2 46:10 | 164:1,8 172:18 | 146:7,12 | leave 19:11 29:12 |
| 183:24 256:4 | 173:7 175:6,17,24 | labels 86:22 | 30:10,18,20,21 |
| knows 172:12 | 183:17 184:7,18 | laboratory 154:6 | 95:2 222:11 |
| 214:8 | 185:24 186:3,21 | labs 25:9 | 245:16 |
| koehler 158:3,3,7 | 187:4,20 188:20 | lack 11:17 91:22 | leaving 178:7 |
| 186:6,13 | 193:2 194:7 | 116:24 160:17 | 182:19 213:12 |
| kopel 2:6 3:18,18 | 195:10,15,21 | 242:22 254:8 | ledges 106:7 |
| 4:2,14 5:5 8:9,17 | 198:18,21 199:11 | lacking 163:8 | left 41:18 132:1,2 |
| 12:10 14:15 27:18 | 199:16 204:16 | lancet 168:10 | 132:22 135:3,6 |
| 28:2 29:22 34:8 | 205:4 207:6 212:1 | landscape 270:12 | 136:6 153:4 183:2 |
| 37:5 39:18 40:12 | 212:18 215:23 | language 153:12 | 188:24 193:12 |
| 41:16 42:3 45:24 | 217:10 218:8 | 153:17 | legal 3:2 |
| 46:21 48:6,14 | 219:3,19 220:10 | large 16:16 45:8 | legged 20:5 96:20 |
| 49:21 51:23 52:11 | 221:13 222:14 | 137:7 152:9 155:6 | 96:23 |
| 52:19 55:6 56:11 | 223:5 225:2,22 | 173:19 176:10 | lend 178:17 |
| 57:21,23 62:9,23 | 226:10 227:3,22 | 184:1 267:2 | length 178:24 |
| 65:10,20 66:7,24 | 229:16,20 230:18 | largely 17:10 | 182:23 206:7 |
| 68:21 72:15,22 | 231:13 232:9,22 | | 208:20 221:23 |

[leo - looking]

| | | | |
|--|--|--|---|
| leo 200:1 234:22 240:6,10 241:11 | light 115:10 133:9 201:24 202:3 | literally 44:7 166:5 | 76:19 81:20 96:20 96:23 101:4 |
| leslie 2:7 3:21 | lighting 115:8 | literature 43:3 50:11 | 162:15 164:10 166:1 168:6 |
| lethal 165:6 171:18 185:20,20 | lights 112:2 115:7 | little 49:15 54:11 64:16 65:17 70:14 87:17 117:1,10 126:17 167:15 172:5 210:1 238:4 268:15 | 170:13 184:23 196:24 201:16 202:19 209:4 218:2 219:1 252:20 |
| letter 153:3 159:7 | liking 217:5 | live 83:13 102:11 102:17 202:24 | longer 41:9 116:5 210:15,19 |
| letters 50:23 | limit 268:24 | lives 82:6 | look 9:12 11:2 14:9 28:6 35:21 49:22 58:4,5 67:10 74:17,20 75:10,23 76:15 86:20 88:19 92:17 94:24 97:21 100:9 134:12,21 138:7 139:17 141:21 144:4,9 145:2,4 146:4 147:8,12 153:10,20 159:6 162:6 167:10 169:1 173:14 178:9 190:17 200:21 232:10 235:8 236:10,24 237:16 264:22 266:14,15 273:18 274:13 |
| level 19:24 25:6 28:18,20 31:24 33:14 36:13,15 40:4 43:15 56:22 68:6 71:3 81:21 90:16 95:10 123:3 123:8,15 124:14 125:3,22 128:18 130:5 133:16 154:10 170:11 177:19 179:21 180:12,13 181:3 183:10 228:14 254:7 262:13,21 262:21 264:2 | limitations 30:5 251:13 | livigni 1:16 2:23 278:1,24 | |
| levels 51:15 54:6 55:4 56:9 58:23 59:2 113:23 128:3 162:18 173:5,23 179:7,18 185:15 201:17 214:6 253:24 262:15,22 | limited 156:22 164:21 253:3,10 | living 108:20 116:7 129:15 135:13 136:17 137:11 140:24 141:24 142:8 245:23 | |
| librarian 156:16 | limits 36:7 175:10 253:21 | llc 1:10,12 3:9,23 5:7,8 9:1,22 198:23 248:11 | |
| libraries 156:14 | lin 200:1,2 234:22 234:22 240:6,10 241:11 | local 20:19 21:8 | |
| lid 270:8 | line 37:21 38:16 57:24 73:12 133:1 133:12 134:10,12 134:22 138:10 140:15 141:3,4,22 149:14 182:5 221:15 263:19,24 | locate 268:17 | |
| life 25:1 100:7 102:2,17 160:17 | linear 84:8 111:10 | located 3:6 72:5 100:21 111:13,18 133:2 134:3 142:20 146:17,21 268:7,8 | |
| lifetime 126:18 128:19 | linearity 176:24 | location 110:8 207:21 217:18,20 219:14 264:9 | looked 26:15 88:23 92:7 161:18 173:3 187:23 |
| lift 269:3,4,18 270:7 | lines 132:19 138:18 141:8 | logarithmic 181:12 | looking 7:5 9:2 12:21 35:22 45:15 89:24 92:21 107:16 141:2,21 158:6 166:15 170:6 181:18,19 192:23 211:4 |
| lifted 269:15 | lins 242:3 276:12 | logical 110:1 224:8 | |
| lifting 269:17 | list 14:10,18 15:3 18:7 21:24 36:11 159:22 | long 16:13 20:5 21:24 25:3 32:5 40:21 50:1 56:8 | |
| | listed 15:5 34:9 63:20 64:6,9 119:4 123:2 155:24 274:19 | | |
| | listen 121:13 122:15 149:11 225:23 | | |
| | listened 63:14 119:5 | | |
| | lists 264:9 | | |

[looking - measured]

| | | | |
|---------------------------|--------------------------|---------------------------|-------------------------|
| 218:24 227:14 | majority 22:6 | 140:2 143:19 | mean 13:23 26:10 |
| 229:9 232:12 | making 10:4 17:20 | 148:16 152:19 | 39:14,19 40:7 |
| 234:15 237:20 | 48:4,8 66:4 79:5 | 161:9 164:5 | 62:10 64:14 65:5 |
| 241:7 242:13 | 121:4,15,17 122:3 | 172:23 175:21 | 66:6,17 67:24 |
| 256:24 267:1,20 | 122:16 199:12 | 184:11 195:18 | 68:4 78:15 87:17 |
| 268:16 272:10 | mammal 16:15,16 | 198:10 248:13 | 88:4 103:18 |
| 274:1,7 276:10 | mammalogy 16:12 | 250:11 276:4 | 106:17 107:6 |
| looks 22:5 74:5 | management | market 47:18 | 108:20 111:9 |
| 93:23 198:16 | 19:19 20:12 26:24 | 48:19 | 114:14 119:1 |
| loose 213:16 | 183:22,22 184:16 | marketers 33:12 | 120:12 130:2 |
| loses 70:14 | managing 20:16 | marking 176:2 | 133:5 141:11 |
| loss 177:17 | mankin 49:2,6 | 196:10 | 159:4 172:4 |
| lot 6:19 37:6 38:6 | 51:21 67:4,6 | married 115:4 | 177:18 183:20,21 |
| 138:12 151:21 | mankin's 49:12 | marsh 166:8 | 202:7 205:24 |
| 170:6 189:11 | 50:12 201:18 | 171:11,19 | 207:8,17 208:7 |
| 198:4 265:13 | manner 35:6 | masonry 268:23 | 227:10 244:12 |
| loud 58:20 59:9 | 82:18 | match 27:12 | 245:2 246:13 |
| 154:11 | mansion 243:24 | matches 50:9 | 247:4 254:19 |
| loudness 42:24 | manual 102:21,23 | material 17:9 55:7 | 263:17 267:14 |
| lounge 142:1 | 146:9 | 68:18 70:16 | meaning 65:9,17 |
| lovely 172:10 | manufactured | materials 10:13 | 66:12 |
| low 73:22 262:15 | 33:11 | 16:8 36:15 70:19 | meaningless 92:4 |
| 262:21,21,22 | manufacturer | 70:20 169:13 | 92:8,14 |
| lower 60:8 124:3 | 55:2 60:19,21 | 176:22 177:1 | means 11:8 26:12 |
| 128:3 263:16 | 64:8 161:24 | 224:1 255:8 | 28:13 39:20 40:9 |
| lowest 28:18 51:6 | manufacturers | matter 64:19 | 40:22 42:7,24 |
| luc 34:23 | 33:3,7 34:18 | 92:13 95:8 98:24 | 47:12 63:24 64:16 |
| lucky 111:4 | 65:24 | 103:9 177:14 | 77:13 91:17 93:12 |
| lunch 118:9 | margarine 168:20 | 200:10 201:6,8,9 | 107:22 108:1 |
| lund 152:3,3,4,17 | 168:22 169:2 | 211:7 224:16 | 123:16 135:7 |
| 153:4 | margin 179:13 | 244:16 258:11 | 149:5 168:2 197:5 |
| m | mark 8:10 52:13 | 276:22 280:5 | 213:21 225:13 |
| m 4:20 | 131:11 139:21 | matters 62:6 | 235:22 257:11 |
| madison 20:15 | 143:20 148:12 | 278:5 | meant 24:1 26:4 |
| 21:6 | 152:17 159:12 | max 189:21 | 37:16 50:23 91:23 |
| main 13:2,8 32:5 | 161:7 164:2 | maximum 63:6 | 133:7 134:7 |
| 61:13 104:9 | 172:19 175:18 | 123:14 189:22,23 | 244:13 255:8 |
| 136:16 137:10 | 184:8 195:15 | 244:9,16 254:9 | measure 179:17 |
| maintain 17:13 | 248:1,10 250:9 | mayhem 189:7 | 194:21 218:23 |
| major 213:14 | marked 8:14 | mcmansions | measured 180:6 |
| | 52:16 131:14 | 246:16 | 181:12 |

[measurements - misunderstood]

| | | | |
|---|--|--|---|
| measurements 177:12 | meters 104:10 107:2 108:4 154:5 154:13,16,22 155:5,15 173:19 176:10 179:1,2 180:14 181:1 | 191:21 192:20 193:4 196:16,22 196:24 198:6 201:8,20 202:8,18 202:19 209:6,13 213:10,11,14,20 213:20 223:17 224:5,10 225:6,17 226:4 230:8,19 231:6 233:9 235:5 238:1,19,23 240:21 245:13 253:1 254:21 255:12,15,21 256:11,17,20 257:14 258:21 259:1 260:8 261:10,12 262:10 263:24 264:10,16 264:24 265:6,15 265:24 266:15 267:2,7 268:11,17 268:18 269:5,9,20 269:23 270:7,9,14 271:3,6,9,13 272:5 272:6,20,24 273:6 273:12,21 274:10 274:14,15,16,18 275:3,6 | migrant 20:22 mike 198:19,22 226:1 mile 263:16 miles 80:18 117:6 milwaukee 25:9 mind 22:2 93:17 146:11 151:4 170:10 174:19 190:17 mindset 242:9 mine 12:4 minimum 63:8 175:1 243:14 244:12,13,14 minute 162:21 185:23 270:17 minutes 159:4 270:18 mirrored 255:21 mischaracterizes 105:17 211:24 241:14 miscounted 144:11 misdeed 241:18 misdeeds 241:19 misinformation 168:5 mislabeling 94:23 missed 276:10 missing 63:22 269:23 misspoke 84:2 138:17 mistake 188:8 mistaken 37:21 mistakes 89:6 misunderstood 222:17 |
| measuring 78:21 78:22 81:13 189:8 194:23 | methodology 27:6 27:8 methods 75:11,24 76:19 mice 17:1,11 20:6 23:7,19 24:2 29:6 29:12,16 30:17,18 31:8,15 32:4,7,12 35:15 38:6,12,16 39:14 40:7 41:14 42:14,21 46:13,22 47:6 62:8,8,13,14 62:17 74:2 76:22 76:23 80:22,24 86:8,10,14,17 87:4 87:11,19 88:2,6 89:20 90:7 91:1,6 91:14,21 92:24 93:1,3 96:10,11,13 96:15 97:1,8 98:4 98:11 103:21,23 103:24 104:7,16 104:19,21 106:2,6 106:7,12,13 107:3 107:7,11,20 108:9 108:16 109:18 111:12 112:13,17 113:1,8 115:16,21 115:21,22 116:6 116:13,17,18 117:13 123:16 128:22 162:2 175:13 184:9 188:11 190:2,10 190:23 191:1,11 | michael 2:15 3:24 9:21 144:14,18 microwave 101:15 101:18 163:22,24 microwaves 101:20 102:1 mid 48:18 56:1,2 112:13 middle 50:5 73:5 74:22 133:3,4,5 235:23 238:23 252:24 | |

[misusing - norway]

| | | | |
|--------------------------|---------------------------|---------------------------|---------------------------|
| misusing 46:1 | 262:19 270:4 | nature 176:22 | nesting 108:16 |
| mixed 254:21 | 272:8,12 | 200:13 241:17 | neurologically |
| mixing 130:24 | move 23:4 66:9 | 244:16 | 39:6 |
| 188:11 | 70:8,12 137:23 | natures 23:24 | neurotransmitters |
| model 100:8,17,20 | 194:13,15 206:11 | near 20:23 72:5 | 39:7 |
| 101:1 201:13 | 206:21 213:24 | 90:9 138:4 | never 7:17 49:9 |
| models 50:12 | 221:8 | nearest 21:3 | 67:24 68:2 93:11 |
| 201:14 | moved 143:22 | nearly 249:23 | 93:13,17 206:4 |
| modest 202:7 | 191:12 204:13 | necessarily 33:5 | 225:4 248:20 |
| modesto 30:10 | 211:15 222:3 | 77:24 78:21 100:7 | new 1:2 2:4 3:12 |
| 188:3 | 228:15 242:15 | 100:9 197:2,22 | 39:12,12 77:14 |
| mogens 153:4 | movement 204:7 | 250:4 263:8 | 103:8 132:15 |
| molecules 70:9 | 211:21 268:24 | necessary 174:23 | 144:22 162:19 |
| moment 117:24 | movements 20:18 | 175:3 248:4 | 166:10 167:5,10 |
| 126:10 261:7 | 204:10,12 | 276:13 | 168:8,10 169:5,14 |
| 265:16 | moves 55:20 221:6 | need 32:7 42:4,7 | 193:17,19 199:12 |
| money 14:1 244:7 | moving 23:2 24:2 | 76:16 103:9 114:6 | 199:12 235:24 |
| monitoring 211:21 | 29:14 62:7,8,13,14 | 114:10 123:23 | news 36:3 37:19 |
| monroe 1:20 2:11 | 70:12 117:5 | 126:12 130:1 | night 214:23 215:1 |
| 3:6 | 135:13 191:14 | 133:8 137:5 | 275:17 |
| monster 213:22 | 211:13 218:23 | 143:12,20 144:8 | nine 260:12 |
| months 24:8 | multiple 247:6,14 | 145:16 146:12 | nineties 48:18 |
| 160:17 204:3 | 248:2,4 254:17 | 155:7 158:12 | 56:1,2 57:4 |
| morning 4:15,16 | multiples 247:1 | 164:10 169:2 | nipping 197:23 |
| mortality 276:18 | mus 115:24 | 187:17 219:24 | 198:2 |
| mother 101:22,22 | musculus 115:24 | 227:4 239:16 | nods 8:1 |
| 160:19 | n | 240:20 243:20 | noise 79:6 |
| mouse 16:15 43:3 | n 4:20,21 279:1 | 247:1,5,14 261:23 | non 26:3 27:15,22 |
| 77:18 78:7 81:18 | name 3:2,13 4:17 | needed 17:24 | 28:8,11 73:11 |
| 81:20 87:9,15 | 5:5 16:5 162:3 | 88:19 120:8 | 165:6 171:18 |
| 88:5 90:11 95:7 | 173:22 | 122:23 240:19 | 181:3 182:22 |
| 97:5 105:4,21 | named 19:5 | 246:22 | 183:5 185:20 |
| 108:22,23 109:7 | names 160:11 | needs 18:3 46:19 | 193:5 |
| 116:1 162:21 | 187:19,22 | 61:23 148:10 | nope 6:3 21:14 |
| 163:20 165:13,17 | narrow 84:9,16 | neighboring 154:7 | normal 77:8 260:7 |
| 165:17 201:23 | 112:19 142:17 | 155:1 220:17 | north 27:1 111:21 |
| 202:2,4 208:23 | natural 76:23 77:5 | neither 26:6 36:20 | 136:24 |
| 213:23 214:8 | 77:7,11,24 79:10 | nerves 39:7 | norvegicus 77:1 |
| 224:7 255:1 | 90:21 91:2,6 | nest 31:16 219:5 | 175:19 |
| 259:14,22,23 | 116:6 | 223:6,11 | norway 77:1 |
| 261:15,24 262:1,3 | | | 182:10 |

[nos - okay]

| | | | |
|--------------------------|---------------------------|--------------------------|---------------------------|
| nos 8:15 52:17 | 268:15 272:6,24 | 232:3 233:14 | 261:16 |
| noses 108:6 | numerous 80:20 | 239:19 240:1 | occasional 157:13 |
| notary 1:17 278:1 | 106:3 246:11 | 241:3,13 242:6,19 | occasionally 18:10 |
| notation 238:18 | ny 2:4 | 243:11,21 244:10 | 126:21 |
| 238:20 | o | 245:6 246:7 | occasions 80:20 |
| note 163:1 | o 4:20,21 19:5,5 | 251:21 253:12 | occupied 217:7 |
| notes 45:6 146:24 | o'clock 243:2 | 255:23 256:21 | occupying 59:8 |
| 168:14 237:24 | 275:10 | 257:19 258:3,17 | occur 13:6 239:9 |
| 238:7 275:15,21 | oath 6:11 280:10 | 260:2,16 261:19 | occurred 13:5 |
| notice 266:11 | obfuscate 271:1 | objection 12:8 | 41:13 206:6 207:2 |
| notwithstanding | object 14:13 27:16 | 100:23 154:17 | 210:23 239:8 |
| 221:18 | 29:17 30:23 39:17 | 194:5 227:1 238:9 | occurring 42:5 |
| novel 77:8 | 40:10 41:15 45:2 | 239:10 | occurs 38:24 |
| number 3:13 21:5 | 45:23 47:22 48:13 | objections 27:23 | oed 128:16 |
| 23:15 43:18 45:5 | 49:13 51:16 52:10 | 46:3 128:1 225:8 | october 267:17,18 |
| 45:7 88:11,12,17 | 54:23 56:6 57:20 | 226:5 227:17 | 267:22 273:23 |
| 90:3,4,7 91:6,14 | 62:4,18 65:7,14,23 | 261:1 | 274:3,4 |
| 105:19 156:1 | 66:14 68:14 77:21 | objective 194:21 | odor 213:12 |
| 164:24 170:15 | 79:22 80:7 81:3 | objects 71:19 | offer 167:10 280:9 |
| 175:2,3,12 188:13 | 83:18 96:17 99:5 | obligation 6:14 | offhand 252:20 |
| 190:22 196:9,10 | 99:20 103:3 | obscure 160:4 | office 80:17 |
| 196:21 197:8 | 105:16 107:14 | observations | 278:19 |
| 198:15,23 205:1 | 109:2 110:9 | 80:19 | officially 36:14 |
| 205:11 218:21 | 114:17 120:10 | observe 260:23 | offspring 202:12 |
| 232:21,23 248:11 | 122:8,21 123:11 | 261:9 | oh 28:4 57:1 60:24 |
| 260:14,21 267:21 | 124:4 125:5 | observed 108:9 | 63:23 74:9 86:24 |
| 269:9 271:3,23 | 126:14 127:14 | 210:21 | 89:22 94:19 109:1 |
| 273:6 274:10,14 | 129:18 133:22 | observing 265:24 | 119:2 133:18 |
| 275:5 276:5 279:8 | 136:12 138:23 | obsessive 128:10 | 137:24 138:17 |
| numbered 25:16 | 142:10 145:19 | obstacles 154:2 | 142:19 144:15 |
| 274:2 | 148:5 149:18,23 | 176:23 | 147:18 155:9 |
| numbers 17:4 | 157:5 163:14 | obstruct 142:8 | 162:4,5 171:12 |
| 30:19 63:20 72:24 | 170:24 175:5 | obstruction 135:9 | 182:17 186:11 |
| 72:24 81:20 87:8 | 177:8 181:9 183:7 | 139:14 140:18,20 | 205:5 223:19 |
| 87:12 147:15 | 188:18 193:17,19 | 141:12 143:2 | 232:18 235:19 |
| 188:23 192:19 | 195:1 204:8 207:4 | obtain 155:22 | 247:20 248:3 |
| 193:4 209:2,2 | 211:23 212:6,22 | obtaining 77:13 | 265:9 267:14,20 |
| 238:3,7,21,22 | 216:19 217:21 | obvious 51:1 | ohio 5:1 |
| 239:14 242:13 | 218:17 219:11 | 261:23 263:22 | okay 5:24 6:9,21 |
| 260:10 266:5,12 | 220:6,14 222:8,22 | obviously 74:15 | 7:13,14,21 8:3,8 |
| 266:15 267:2 | 224:20 230:12 | 74:24 104:13 | 9:7,11,23 10:8,18 |

[okay - original]

| | | | |
|--------------------|--------------------|--------------------------|---------------------------|
| 11:2,9 12:5,13 | 134:17,21 136:3 | 226:21 232:24 | operated 174:13 |
| 13:18 14:2,9,17,24 | 137:2,12,20,23 | 233:20 234:10,11 | operating 103:2 |
| 15:13 18:6,17,22 | 138:5,18 139:11 | 234:24 235:16 | operation 53:12 |
| 19:12,22 22:19 | 139:17 140:6,13 | 236:10,15 237:10 | opinion 12:24 28:5 |
| 27:13 28:4 29:8 | 140:15,20 141:2,5 | 237:11,23 239:3 | 29:2,4 32:11 |
| 29:23 30:12 34:9 | 141:7,10,15 143:3 | 240:16 245:3 | 45:18 64:4 139:4 |
| 34:14,17 35:7,13 | 143:11,15,17,22 | 247:12 248:2,6,19 | 155:5 158:8 |
| 37:6,10,14,23 | 144:4,15 145:7,11 | 248:23 250:2,20 | 166:14 186:18 |
| 38:20 39:22 40:6 | 146:14 147:8,14 | 251:4 252:3,24 | 193:7 204:18 |
| 40:14,24 41:11 | 147:18,21 148:2 | 253:6 254:15,23 | 207:9 251:8 257:3 |
| 42:2,16 46:8 47:5 | 148:20 150:14 | 255:19 258:8 | 262:17 276:21 |
| 47:11,14 48:19,24 | 151:1,10 152:2 | 259:11,14,14,22 | 277:3,9 |
| 49:1 50:6 51:11 | 153:9 154:22 | 260:7,21 261:7 | opinions 10:9,20 |
| 52:3 53:16,20 | 155:3,4,9,13 157:7 | 265:18 267:4 | 10:21,24 11:20,24 |
| 54:17 55:15 56:3 | 158:12 159:8,14 | 268:2,3 271:17,20 | 12:6,19 13:12,22 |
| 57:24 58:3,10,14 | 159:18 160:1,5,15 | 272:8,12 274:9 | 14:5,12,20 15:5 |
| 58:19 59:11 61:22 | 161:3,14,15 162:5 | 275:1,8,20 | 167:5 186:11 |
| 63:4 64:3,13,23 | 163:12,18 164:15 | old 103:7 158:5 | opportunity |
| 65:4,11 66:5,8 | 164:18 165:5 | 169:13,13 | 173:13 178:13 |
| 67:7,9,10,24 69:22 | 167:6,15 169:16 | older 156:2 | opposed 83:23 |
| 70:15,23 71:7 | 171:13 172:6,14 | once 5:23 76:12 | 109:13 208:11 |
| 72:15 73:4 74:1,4 | 172:16 173:12 | 112:11 138:1 | opposing 148:13 |
| 75:7,9,14 76:7 | 174:2,5 175:16 | 180:17 192:14 | opposite 107:8 |
| 77:17 82:9,18 | 176:8 177:21 | 268:14 | 203:19 |
| 86:24 87:3 89:5 | 178:8,8,12,16,23 | ones 33:15,17,23 | option 40:23 41:19 |
| 89:12,21,22 91:11 | 179:20,22,23 | 43:24 83:15 95:18 | 182:19 |
| 92:5 93:6,18 95:4 | 180:15 181:7,14 | 140:24 157:18,20 | options 58:20 |
| 96:3,5 97:3,7,19 | 182:17 184:15,21 | 159:24 160:5 | 61:13 92:23 |
| 98:1,9 99:11 | 184:22 185:1,21 | 198:8 201:19 | opulent 246:2 |
| 101:10 102:3 | 186:9,21 188:2,4,9 | 231:18,18 263:6 | orally 35:10 |
| 103:21 104:5 | 190:13 192:19 | 271:24 | order 42:4 48:8 |
| 107:19,24 108:14 | 195:12,15 196:12 | online 157:2,20 | 58:23 113:24 |
| 111:5,24 113:20 | 197:10 198:24 | 159:12,16 | 120:9 121:19 |
| 115:11,19 116:19 | 199:8,15,19,24 | onward 235:15 | 132:11 |
| 117:21 118:16 | 200:4,16 201:2 | opaque 71:13 | ordered 277:21 |
| 119:6,10,19 121:4 | 204:17,24 206:2 | open 74:19 128:14 | organisms 123:15 |
| 121:13 122:2 | 207:13 208:2,18 | 129:11,21 130:1 | organized 37:10 |
| 124:23 125:12 | 212:2 214:14,19 | 223:24 262:23 | 151:24 |
| 130:1,11,18 131:7 | 215:11 216:2 | 269:4,5 | orientation 84:18 |
| 132:11,19 133:14 | 219:24 220:4 | operate 44:1 | original 26:6 45:6 |
| 133:20,21 134:4 | 221:18 222:15 | 103:14 | |

[originally - parks]

| | | | |
|--------------------------|---------------------------|---------------------------|---------------------------|
| originally 55:24 | 217:21 218:17 | overhead 115:10 | 198:22 199:7,8,17 |
| ornithological | 219:11 220:6,14 | overview 158:3 | 200:24 204:24 |
| 27:2 | 222:8,22 224:20 | 166:7 | 205:8,8,10 231:11 |
| ostojic 2:14 3:22 | 225:8 226:5 227:1 | owned 21:3 | 231:14,15 232:13 |
| 3:22 12:8 14:13 | 227:17 230:12 | owner's 146:9 | 232:14,14,21,23 |
| 27:16,23 28:1 | 231:12 232:3,21 | p | 233:1 247:20 |
| 29:17 30:23 34:3 | 233:14 235:13 | p 4:21 | 251:4 264:11 |
| 34:6 36:22 39:17 | 236:20 237:1,7,16 | p.a. 2:2 3:19 | 272:10 274:1 |
| 40:10 41:15,22 | 238:9,13 239:10 | p.m. 118:2,5 150:5 | 276:5 279:8 |
| 42:2 45:2,23 46:3 | 239:19 240:1 | 150:8 158:15,18 | pages 1:24 25:16 |
| 46:6 47:22 48:13 | 241:3,13,24 242:6 | 186:23 187:3 | 134:2 144:6 145:4 |
| 49:13 51:16 52:10 | 242:19 243:11,21 | 243:2,5 274:7 | 145:5 147:15 |
| 54:23 56:6 57:20 | 244:10 245:6 | 275:10,13 277:20 | paid 18:20 20:13 |
| 62:4,18 65:7,14,23 | 246:7 251:21 | pace 7:12 | 209:20 |
| 66:14 68:14 73:12 | 253:12 255:23 | package 119:14 | painful 39:4 |
| 73:14 76:1,5,7 | 256:21 257:19 | 144:13,17 145:2 | paint 70:3 |
| 77:21 79:22 80:7 | 258:3,6,14,17 | 147:22 | pantries 128:4 |
| 81:3 83:18 91:3 | 260:2,16 261:1,19 | packaging 30:6 | pantry 128:14,20 |
| 96:17 99:5,20 | 262:5 273:8 276:2 | 50:17 149:2 | 224:13,14 |
| 100:23 103:3 | 277:16,21 279:5 | 247:18,20 | paper 26:16 28:6,6 |
| 105:16 107:14 | outcome 99:7 | packs 144:21 | 28:8 76:15 156:9 |
| 109:2 110:9 | 278:17 | page 25:23 36:2 | 161:23 167:1,2 |
| 114:17 120:10 | outlet 72:5 110:7 | 38:9 41:6 48:22 | 182:14 189:4 |
| 122:8,21 123:11 | 110:14 115:9 | 49:1,23 72:24 | papers 28:16 |
| 124:4 125:5 | 123:7 124:3 | 73:1,9,10 74:19,20 | 155:21 156:2,5,6 |
| 126:14 127:14 | 130:20 133:2,2 | 74:21 75:11,24 | 156:12,23,24 |
| 128:1,24 129:18 | 135:3 140:16 | 76:1 104:6 115:13 | paragraph 26:2 |
| 135:21 136:12 | 142:19,19 | 115:17,17,18 | 49:1,23,24 72:24 |
| 138:13,23 142:10 | outlets 110:24 | 131:24,24 132:14 | 73:5,8,9 74:22 |
| 145:19 146:1,6,13 | 111:4,7,13,18 | 132:15,15,19 | 76:18,19 130:15 |
| 148:5 149:18,23 | 112:2,3,6 115:2,7 | 133:10,12 134:10 | 153:11,21 154:18 |
| 154:17 157:5 | output 92:23 | 134:21 138:7,8 | 157:10 158:2 |
| 163:14 170:24 | outside 17:14 18:6 | 140:14 141:8,22 | 162:8 252:24 |
| 175:5 177:8 181:9 | 20:10 21:9 52:4 | 144:5,9,12,24 | 254:5 |
| 183:7 185:22 | 138:4 210:4 | 145:20 146:2,4,19 | paragraphs 25:16 |
| 186:1 187:17 | 247:17,19 253:10 | 147:14,20 150:11 | parallel 258:9 |
| 188:18 192:24 | 253:18 268:24 | 153:5,8 162:6,11 | parasitology 16:4 |
| 194:5 195:1 204:8 | ovens 136:18 | 166:3 167:16 | pardon 237:2 |
| 205:3 207:4 | overcrowd 81:22 | 168:14 171:6 | parke 1:5 |
| 211:23 212:6,22 | overcrowding | 180:20 196:8,11 | parks 20:19 21:8 |
| 215:17 216:19 | 189:1,4 197:19 | 196:12 198:15,19 | |

[part - philip]

| | | | |
|---|---|---|---|
| part 16:23 25:15 39:2 45:4 65:5 72:2 82:1 102:2 118:17 119:19 126:11 138:1 156:3,5 157:12 168:14 197:24 269:3 | pay 21:5 157:2 paying 17:3 peanut 108:6 peculiarly 24:20 peer 26:3,11,12 27:3,14,15,21,22 28:8,11 35:13 36:13 37:24 41:11 73:11 159:7 163:1 166:22 167:2,7,9 167:11,13 184:19 209:17,22 210:8 211:9 | 128:19 129:7 166:12,13 186:11 255:16 perceive 202:9 perceiving 264:3 percent 20:22 21:2 69:12,13 80:10 168:11 181:17 202:14 255:5 264:23 265:24 267:10,12,13,14 271:2 | personal 158:9 278:8 personally 62:21 151:1 pertain 99:15 pertained 187:10 pertains 82:18 99:16 pest 19:19 20:12 22:16,22 29:5 50:24 82:19 144:21 145:9 147:10,17 150:17 152:13 153:9 156:8 176:15 187:10 191:8 193:24 194:1,1,3 194:10 218:10 220:1 221:15 243:19 249:9,12 277:7 |
| partial 143:1 157:10 162:9 partially 59:1,1 participation 21:6 particles 70:9,9,10 particular 276:5,9 particularly 106:5 159:12 174:10 parties 3:16 278:15 partly 160:16 parts 10:4 223:22 party 5:14 79:3 208:7 pass 104:7 167:18 passage 38:15 96:8 passing 43:18 patent 22:17 patents 22:15 path 84:13 pattern 58:11 59:12,13,24 60:15 62:15,24 84:19 92:1 95:17 97:22 98:20 190:4 patterns 59:15,21 60:7 61:1,14 116:11 | peers 26:20 28:20 penalty 280:2,3 pending 133:19 146:16 238:16 penetrate 68:5 69:23 70:16 127:2 256:14 penetrated 128:6 peninsula 134:16 135:17,17 pennsylvania 252:7,11 people 18:4 21:5 28:16 36:16 37:3 52:5 59:2 66:10 82:19 83:13 101:24 105:20 106:3 113:11 116:22 128:11,16 128:16 136:21 149:8 156:6 158:10 167:14 168:6,15 169:1 184:1 191:17 210:6 224:2 234:20,23 242:9 | perception 251:15 perfectly 50:10 117:20 160:4 performed 19:18 21:10 30:14 performing 240:12 period 104:3 182:2 205:16 206:7 207:3,13,14 209:23,24 210:2,2 210:10,11,14,15 211:14 212:20 213:10 215:10 235:24 266:2 periods 202:20 205:14 perjury 280:2,3 permanently 42:9 permeate 149:13 149:15 permission 21:8 persisted 229:13 person 17:19 35:4 79:4 86:21 89:3 121:20,24 122:6 122:18 149:20 224:8 | pests 14:3 36:8 58:16 59:2 81:12 97:23 125:23 127:13,23 128:21 139:6 197:11,13 202:6 203:18 204:5 216:16 226:24 ph.d. 1:15 2:19 3:14 4:10 77:6 279:3 280:14 phase 209:13 264:18 265:4,21 266:10,17,22 267:7 pheromones 213:12 philip 1:15 3:14 4:10,19 8:11 279:3 280:14 |

[phone - portion]

| | | | |
|---|---|--|--|
| phone 4:2,6 57:6 135:3 | places 16:20 18:1 30:19 60:4 106:5 112:1 126:20 263:18 275:3 | 147:12 150:3,10 150:12,21 151:12 152:17 153:10,20 158:13 161:7 162:6 164:2,11 172:15,19 173:9 175:16,18 177:1 178:8,11 181:14 184:8 186:21 196:8 198:12 199:8 204:24 225:23 229:16 230:5 232:10 236:10,15,17 237:5 238:12,17 242:24 247:8,24 248:10 250:9 251:4 252:6,15 257:4 258:12 263:12 264:8 265:15,16 275:8 | 145:13 148:10 149:4 177:19 plugging 177:22 plugs 123:6 point 16:13 22:9 28:10 41:8 43:14 43:19 44:5 69:3 87:13 88:1 106:12 106:20 109:13 112:23 113:3,7 114:14 129:21 146:23 147:1 149:6 173:5 182:6 185:22 239:17 263:21 267:6 269:15 |
| photocopy 144:12 144:16 | placing 109:15 plain 66:12 plains 4:21 plaintiff's 9:20 plaintiffs 1:8 2:8 3:8,19 5:6 14:1 | plane 100:8 planned 244:24 plaster 70:1,2,2 plastic 55:16 56:16 128:7 256:5 269:19 | pointed 125:18 126:1 130:8,21 139:10 148:4 pointing 109:16 154:12 177:20,21 178:1 |
| photographs 270:24 | play 168:17 played 59:16 playing 210:18 | plenty 178:18 plexiglas 76:21 77:18 78:6 80:23 81:18,24 82:5,10 82:21 83:13,17,23 84:1,5,9,13 85:9 85:17,24 190:21 231:2 238:4 | points 86:23 114:12,22 119:16 145:17 160:23 172:3 214:3 |
| physical 25:5,7 57:8,9,13,14 193:11,15 196:16 197:2 198:3 264:4 | plane 100:8 planned 244:24 plaster 70:1,2,2 plastic 55:16 56:16 128:7 256:5 269:19 | plug 111:22 112:14,18 123:23 126:8 148:23 | police 252:7,11 political 21:7 popping 163:24 population 91:7 154:4 197:6 |
| physically 106:21 180:10 | please 4:2,4,17 6:20 7:11,20,24 8:10 9:11 11:2 14:10,17 15:16,21 15:23 25:14 35:21 36:11 40:2 41:4 42:11 43:11 48:22 49:22 50:22 52:4 52:13 58:4 59:12 60:14 63:4 67:10 69:5 71:8,17 72:16,23 74:1,3,17 75:10,23 83:1 92:17 93:17 97:21 117:22 118:13 119:11 121:13 122:14,15 131:11 136:15 138:8 139:21 140:6,13 141:22 143:24 144:4,6,9,24 145:4 145:11 147:8,11 | plugged 110:13 112:15 114:24 123:3 124:3,14 125:12,16 126:13 130:4 131:3,4 132:20 134:18 135:15 138:21 139:7 140:16 142:16 143:7 | populations 76:22 76:23 77:3,19 78:7,11 80:23 81:19 208:23 209:9 |
| physics 24:21 71:2 physiological 197:19 physiology 202:15 203:15 | pick 103:11 219:17 224:8 picked 24:3 155:3 267:22 picture 100:9 202:3 pictures 89:14 145:1 201:23 piece 136:19 162:19 piezo 54:9 pillows 31:7 pipng 129:10 place 30:9 65:18 107:13 110:1,19 127:12,22 161:24 165:12,13 181:15 192:12 258:20 270:2 278:12 placed 67:20 108:4 111:6,11 172:1 placement 104:6 110:3 132:18 | plenty 178:18 plexiglas 76:21 77:18 78:6 80:23 81:18,24 82:5,10 82:21 83:13,17,23 84:1,5,9,13 85:9 85:17,24 190:21 231:2 238:4 plug 111:22 112:14,18 123:23 126:8 148:23 plugged 110:13 112:15 114:24 123:3 124:3,14 125:12,16 126:13 130:4 131:3,4 132:20 134:18 135:15 138:21 139:7 140:16 142:16 143:7 | porter 36:20 portion 25:11,14 76:10,12 92:17 115:12 147:4,9 150:22 180:21 |

[portion - produced]

| | | | |
|---------------------------|--------------------------|--------------------------|--------------------------|
| 198:13 | 255:21 259:3,5 | 230:22 261:21 | 106:4,14 109:12 |
| portions 38:9 | practical 152:8 | 266:19 | 110:23 253:7,22 |
| posit 225:11 | 153:12 164:21 | prevent 42:5 | pro's 53:12 |
| position 84:8 | predesignated | 123:8 142:9 172:1 | probabilities |
| 209:11 | 93:3 96:13 | prevented 107:10 | 20:17 206:10 |
| positions 119:15 | predictably 221:3 | preventing 182:11 | probability 20:20 |
| possibilities 84:6 | prefer 80:9 151:8 | previous 33:2 | 54:4,18 105:8 |
| possibility 66:20 | preferably 260:19 | 278:3 | 212:12,13 218:4 |
| 84:3,4 | preliminary | previously 10:16 | probable 145:17 |
| possible 20:16 | 205:13 207:10 | 76:24 143:19 | probably 10:12 |
| 64:16 76:14 99:1 | 237:11 | 155:17,18 158:4 | 31:8 37:20 48:10 |
| 99:14,16 100:5 | premises 104:17 | 198:10 276:4 | 48:18 55:23 61:19 |
| 107:10 180:11 | 107:12 172:3 | primarily 23:4 | 67:7 80:10 105:5 |
| 212:3 217:19 | prepare 134:23 | 63:23 64:11,14 | 109:9,10 114:11 |
| 219:7 228:15 | 275:16 | 65:5,12,22 66:5,12 | 114:21 116:9,18 |
| 230:8 | presence 71:19 | 103:5 271:10 | 128:3 130:14 |
| possibly 80:24 | 86:3 157:23 194:1 | primary 4:23 | 142:6 161:23 |
| 139:5 | 194:18 206:12 | 161:1 243:19 | 165:10 201:9 |
| post 56:14 205:13 | 232:6 233:10 | 246:1 | 211:6 219:23 |
| 205:16 235:17,20 | 243:15 | principal 19:23 | 233:8 242:11 |
| poster 89:14 95:2 | present 2:1,18 | principle 77:10 | 245:14 255:14 |
| potentially 134:19 | 3:15 66:13 67:2 | print 28:23 77:12 | 262:8 |
| potter 9:21 12:22 | 73:20 116:2 | 156:13 | problem 78:5 |
| 13:1 29:10 36:22 | 174:11 246:15 | printout 53:2 | 89:23 110:8 |
| 36:24 37:7 69:6 | presented 211:9 | 250:17 | 125:13,16 126:4,6 |
| 143:19 144:1,2,3 | president 65:19 | prior 87:13 93:1 | 142:24 143:14 |
| 150:16 155:19 | pressure 197:6 | 96:11,14 102:9 | 149:6 164:14 |
| 157:8 159:5 | pretend 90:10 | pro 16:22 21:21 | 176:14 190:1 |
| 174:24 192:9 | pretest 82:15 | 23:12,17 31:13 | 245:13 |
| 202:1 207:23 | 190:24 192:15,21 | 32:17 38:11 42:18 | problems 189:24 |
| 213:13 215:3 | 206:1,4 207:20,22 | 44:21 47:6,15 | procedure 153:22 |
| 221:10 226:1 | 211:4 212:20,24 | 48:15 50:9,16 | 153:24 |
| 228:7 234:5 236:9 | 213:9 264:18 | 51:13,24 52:23 | proceedings 26:14 |
| 236:12 239:4 | 265:4,21 266:10 | 53:14,18,24 55:9 | 278:10 |
| 247:9,9 254:24 | 266:17,22 267:7 | 55:12,22 56:4,18 | process 35:5 |
| potter's 10:14 | pretests 211:10 | 56:24 57:9,13,16 | produce 54:7,13 |
| 13:2,8 14:22 49:8 | pretty 92:16 | 58:8 61:24 62:2 | 77:3 78:11 167:12 |
| 119:5 157:14,24 | 104:18 105:5 | 62:11,14 63:11 | 202:11 |
| 188:1 207:18 | 108:20 113:1 | 67:5 73:3 74:2,11 | produced 27:20 |
| 213:8 225:11 | 166:7 201:18 | 76:3 86:8 93:7 | 27:22 50:8 55:3,4 |
| 226:16 228:4 | 202:9 203:16 | 94:6,11 97:11 | 66:18 93:13 95:1 |

[produced - question]

| | | | |
|---|---|---|--|
| 189:17 202:12 205:6 producer's 154:1 produces 54:6 63:6,8 64:17 producing 43:1 56:9,9 61:10,12 73:22 170:5 180:12 product 24:13 66:20 99:2,17 100:16 115:22 146:7 152:10 183:19 250:21 251:5,9,13,15,20 production 10:19 59:14 64:18 99:8 275:21 products 18:23 19:1,2,16 33:13 101:14 249:13 professional 71:3 professionals 21:15 professor 5:1 16:14 156:20,21 projected 98:21 prolonged 39:8 165:10 promise 130:10 promotes 183:13 proof 117:3 154:4 210:16 proper 26:13,19 80:2 119:15 176:19 225:1 236:1,4 256:18 properly 103:24 properties 25:6 51:21 | proposed 27:4 pros 42:23 56:19 protect 113:4 117:6 243:18 protected 116:7 154:2 protesting 208:10 protocols 172:19 253:3,11 proved 62:7,13,14 168:12 225:18 proven 222:3 provide 162:19 175:1 277:22 provided 19:12 36:16 69:6 100:19 106:23 116:8 120:13 142:13 154:5 155:20 157:22 170:1 255:9 provides 143:1 providing 168:1 psychiatry 82:3 psychological 116:4 psychologists 210:12 psychology 17:12 210:5 public 1:17 278:1 publication 26:5 26:10,17 27:14,15 27:21,22 116:20 168:13 209:22 210:9 publications 21:21 22:1,12 26:4 27:1 27:4 28:12 33:1 73:11 168:9,11 169:5 209:17,18 | publish 28:22 166:6 167:3 published 21:21 24:9 26:5,21 33:5 37:2,4 186:15 publishing 27:10 28:16 pull 38:4 pulsating 62:3 95:14 201:12 pulsing 61:12,16 61:19 96:6 pump 115:9 pumps 106:16 paps 46:14 purchasers 83:10 purchasing 184:2 pure 206:17 239:21 purely 270:12 purpose 238:13 purposefully 66:11 purposes 17:3 47:20 purveyors 33:3 pushed 198:7 put 11:4 24:1 63:11,14 66:10 71:10 78:23 82:14 86:21 87:19 89:13 90:13 102:11 105:23 115:6,7 116:24 117:21 119:15 130:15 134:15 135:1,4 143:12 175:16 187:6 189:9 192:9 204:15 209:6 211:18 213:8 215:21,24 216:8 | 216:15 224:9 252:6 256:3 261:3 268:21 putting 28:17 69:10 109:23 128:13 159:11 204:4 240:8 q qmann 187:16 188:7,9,19,21,22 189:12 249:21 250:1 quad 23:14 quadrant 132:2,15 qualification 29:9 qualifications 15:24 200:7,11 240:6,11 qualified 200:17 240:16 241:2 qualities 50:10 quantity 233:4,12 276:11 quebec 34:24 question 11:9 12:6 12:17 14:17 15:7 15:21 21:13,18 28:14 35:9 37:23 40:2 41:1,23 47:3 51:2 54:21 57:11 60:19 67:19 75:22 78:3 83:2 92:5 99:13,15 100:6 116:19,21 121:14 121:15 122:2,15 127:5,7,9 133:18 134:16,17 141:23 144:2 146:16,20 148:9 151:9,10,13 151:17,19 152:10 153:15 155:14 |
|---|---|---|--|

[question - real]

| | | | |
|---------------------------|---------------------------|---------------------------|---------------------------|
| 157:17 169:19 | raised 33:14 | 128:23 162:2 | reached 122:19 |
| 182:18 186:4 | 128:16,17 134:14 | 167:2 171:4 | reaching 35:2 41:8 |
| 187:18 191:23 | 134:19,24 135:12 | 175:13 182:10,19 | 196:5 197:10 |
| 192:24 194:16,17 | ran 33:6 34:18 | 184:9 188:24 | react 81:1 116:16 |
| 195:8 203:8 | 115:9 229:14 | 189:1,5,9 190:10 | reaction 78:19 |
| 215:20 222:2,18 | random 206:16 | 190:23,24 191:11 | read 11:14 50:20 |
| 225:4,24 226:21 | 265:11 | 191:14,21 192:19 | 66:17 76:16 77:15 |
| 227:8,12,16 | range 29:14 30:1 | 193:4,13 196:16 | 83:3 96:8 100:10 |
| 229:17,23 230:4 | 36:8 44:10,11 | 196:22,24 198:6 | 100:14 101:17 |
| 233:20 236:15,21 | 46:10,13,18 51:6 | 201:22,23 202:13 | 102:8,21 103:2,7 |
| 238:16 240:5,11 | 63:5 64:17 68:19 | 202:24 203:1,6,11 | 103:10,15 132:7,8 |
| 247:12,15 257:4,6 | 68:24 85:6 87:10 | 203:15 204:1 | 138:5 143:5,9 |
| 258:12,14 269:21 | 95:22 96:4 99:8 | 205:11,15,21 | 151:14 157:3,18 |
| questionable 37:4 | 103:5 112:20 | 206:13 209:6 | 163:10 183:21 |
| questioning 58:1 | 170:20 177:6 | 210:21 211:13,17 | 185:12 204:2 |
| 169:12 | 179:1,8,15 181:22 | 211:18,20,21 | 229:16,18 258:15 |
| questions 5:10 | 202:8 225:20 | 213:4,9,10 214:19 | 280:4,6 |
| 6:19 7:19,20,24 | 251:13 | 214:23 216:3,8,10 | reader 184:3 |
| 30:13 47:3 148:20 | ranges 185:14 | 217:13,14,17 | reading 9:1 101:2 |
| 204:19,21 261:24 | 203:16 | 218:1,10,15,21,24 | 101:7 102:23 |
| 277:17 | rank 89:10 | 219:4,8 221:19 | 121:2,21 122:1,6 |
| quick 72:15 74:18 | rarely 102:7 | 222:3,6,10,20 | 122:19 125:10 |
| 139:17 147:8 | 246:14 | 223:6 224:5,10 | 155:7 164:9 171:5 |
| 232:10 | rat 77:1 105:5 | 225:6 226:4 229:2 | 189:11 |
| quickly 38:17 68:8 | 109:4 154:4 | 229:10 230:8,19 | readings 181:3 |
| quiet 61:9 63:5,6 | 163:20 189:6,19 | 231:6,23 233:9 | reads 26:3 49:24 |
| 63:17 64:10 65:1 | 202:1,2 203:12 | 235:5,16,21,22 | 73:19 76:20 92:22 |
| 67:3 93:12,20 | 218:13 219:21 | 236:14 237:10,12 | 104:6 120:7 |
| quite 54:6 58:20 | 220:1 224:6 | 237:13,15 238:1 | 138:10 153:24 |
| 118:10 170:20 | 235:23,24 239:14 | 238:18,23 239:5 | 181:2 |
| 182:11 207:16 | 253:1 | 240:10,20 242:18 | ready 161:17 |
| quote 171:5 | rate 18:21 | 254:20,21 276:8 | 164:11 178:11 |
| quotes 157:8 | rats 17:11 23:7,19 | 276:15,19 | 184:24 |
| 158:1 | 24:2 29:6,16 | rattus 77:1 175:19 | real 13:4,6 30:15 |
| quoting 158:2 | 32:12 35:15 38:17 | reach 30:2 31:22 | 32:7 66:9 74:17 |
| 186:13 | 39:14 40:7 41:14 | 72:6 107:6 109:6 | 77:2 78:11 79:20 |
| r | 42:21 46:13,24 | 116:23 120:9 | 80:6,9 81:2 101:5 |
| r 4:20,21 19:5 | 47:1,8 62:8,13,17 | 136:4,7 176:11 | 102:2 222:18 |
| raccoons 20:6 | 62:21 63:1 80:22 | 179:4 180:2 254:2 | 223:22 255:16,22 |
| raise 28:10 | 80:24 82:4 113:8 | 255:17 256:12 | 256:20,24 258:9 |
| | 117:14 123:16 | | 258:20,22 |

[realistic - rely]

| | | | |
|---------------------------|---------------------------|--------------------------|---------------------------|
| realistic 228:3 | 250:3,4 | 132:12 158:5 | refreshes 276:6 |
| realize 40:20 97:1 | recognized 36:14 | 160:10 162:11 | refrigerator 31:18 |
| 183:12 | 161:24 | 167:4 187:17 | 104:22 108:18 |
| really 51:18 56:13 | recognizing | referenced 16:14 | 224:17 |
| 65:18 71:1,15 | 192:11 | 199:4 247:13 | regard 68:17 |
| 102:15 104:1 | recollection 21:12 | references 13:5 | 219:15 |
| 125:20 167:20 | 53:17 95:1 131:2 | 36:21 37:1 38:23 | regarding 22:12 |
| 204:14 220:4 | 134:2 231:8 276:6 | 71:6 159:1 160:9 | 25:23 32:17 35:23 |
| 256:24 | recommend 20:18 | 166:1,4 | 44:20,22 46:24 |
| realm 66:21 | 110:12 152:11 | referencing 73:1 | 47:6 150:22 152:3 |
| realms 202:21 | recommended | 74:3 133:23 | 176:14 229:7 |
| reason 8:5 28:13 | 82:24 | 140:21 169:1 | 247:12 |
| 49:15,19 65:22 | record 3:1 4:18 | 180:20 199:20,20 | regardless 201:11 |
| 81:14 114:5 | 5:4 7:9 51:3 72:17 | 232:15 264:13 | regards 41:13 |
| 117:10 | 72:20 78:18 83:3 | referring 13:17 | 42:16 46:22 97:7 |
| reasonable 7:12 | 85:19 117:23 | 16:21,24 32:10 | 125:8 139:11 |
| 81:21 83:8 116:15 | 118:1,4 146:21 | 34:11,15 36:12 | 148:20 189:12 |
| 277:4,10 | 150:2,4,7 151:14 | 41:22 44:10 48:5 | regular 39:15 |
| reasonably 270:10 | 158:13,14,17 | 51:5,9 52:7 59:9 | 133:2 |
| reasons 10:10 | 179:9 186:22 | 59:14 89:19 | regularly 46:14 |
| 46:17 | 187:2 196:13 | 100:15 135:10 | 54:9 |
| rebuilt 101:5 | 226:20 229:18 | 139:14 141:12 | related 60:12 |
| rebuttal 9:20 | 243:1,4 258:15 | 142:5 188:19 | 175:3 |
| 11:15 93:18 | 261:24 273:20,21 | 247:21 252:19 | relationship |
| 150:11 173:15 | 275:9,12 277:19 | 254:12,19 259:1,2 | 208:20 |
| 178:20 | 278:9 | 267:24 268:2 | relative 134:6 |
| recall 11:4 15:19 | recorded 19:10 | 270:15 | 150:15 155:20 |
| 22:3 125:10 | 181:4 239:22 | refine 64:20 | 278:13,14 |
| 133:22,24 157:17 | recordings 19:12 | reflect 58:7 68:9 | relatively 155:21 |
| 237:15 238:1 | records 10:15 | 69:20 | relay 60:19 |
| 252:18 | 16:18 88:2 197:13 | reflected 72:2 | relayed 49:17 |
| receive 18:22 | redirect 275:24 | reflection 113:12 | relevance 173:24 |
| 19:15 | reduce 20:20 | 124:19 177:17 | relevant 45:10 |
| received 9:10 | 68:16 72:12 172:2 | 262:20 | 202:5 205:16 |
| 10:13 270:21 | 256:4 | reflections 91:19 | reliable 27:21 |
| recitation 186:10 | reduced 69:11 | reflects 70:4,7 | 28:18 |
| recites 225:12 | 278:8 | 263:14 264:6 | reliance 251:18 |
| recognize 36:4 | reduces 68:19 | refraction 124:19 | reluctant 62:22 |
| 53:2 132:4 145:5 | 71:19 255:5 | refresh 53:16 | 213:24 |
| 155:11 184:16 | reference 12:22 | 131:2 134:1 | rely 53:23 277:4 |
| 208:22 249:8,24 | 36:17 49:2 69:7 | | 277:10 |

[relying - requirements]

| | | | |
|--|---------------------------|---------------------------|---------------------------|
| relying 32:11,13 32:19 196:5 | 171:19 213:4 220:22 | 265:5 277:7 | 196:5 199:4,19,21 |
| remainder 266:4 | repellent 22:22,22 | repelling 11:22 | 238:18 249:19 |
| remark 233:4 | 23:5,7,10 157:13 | 12:1 13:13 46:8 | 250:1 252:16 |
| remarried 102:5 | 172:20 | 68:23 77:14 123:9 | reported 2:23 |
| remember 67:4 | repellents 22:16 | 125:13,15,23 | 80:11 87:12 88:7 |
| 139:12 155:13 | 23:19 | 151:3 164:21 | 255:6 278:7 |
| 160:5 168:18 | repeller 50:24 | 217:8,9 220:24 | reporter 1:19 7:7 |
| remembering | 72:5 125:1 129:21 | 221:7 265:6 | 7:8,12,16,24 8:10 |
| 247:23 | 138:20 139:5 | 276:23 | 52:12 57:22 |
| reminder 238:17 | 143:7 144:21 | repels 217:5 | 131:10 139:20 |
| reminds 130:16 | 145:10 176:15 | 225:14 | 152:16 161:6 |
| remote 102:12 | 191:2,8,12,13 | repetition 191:17 | 164:1 172:18 |
| remotely 3:15 | 192:1 193:4,5,12 | rephrase 27:19 | 175:17 176:1 |
| remove 130:8 | 193:24 194:1,3,10 | 29:3 79:18 84:24 | 179:10 184:7 |
| removed 74:23 | 194:22,23 195:5 | 175:7 194:8 | 247:24 248:9 |
| 156:14 | 197:4,13 200:22 | replaced 101:24 | 250:8 278:2 |
| removing 20:23 | 204:20 218:2,10 | 101:24 235:24 | reporting 273:14 |
| rendering 11:20 | 219:6 220:1 | 236:8 238:24 | reports 6:4 8:10 |
| 11:24 12:6,18 | 221:15,19 243:9 | 239:5,17 240:10 | 9:24 10:3,8,20 |
| 13:12,21 14:5 | 261:16,17 262:2 | 242:4 276:9,15 | 93:19 94:2,5 |
| repeat 63:4 83:1 | repellers 11:21 | replacement | 187:21 188:21,22 |
| 91:24,24 151:12 | 12:1,19 13:13 | 236:13 | 189:12 196:3 |
| 258:14 | 29:5,13,15 32:12 | replicate 110:21 | 249:22 |
| repeated 37:22 | 43:7 51:14 69:9 | replicates 159:3 | represent 3:17 5:5 |
| 168:3 171:2 | 82:20 99:15 | 162:14 | 131:2 144:7,8 |
| repel 19:6 29:6 | 129:16 137:3 | replication 169:4 | 179:14 |
| 35:15 38:2 40:8 | 147:10,17 149:4 | replications 174:8 | represented 6:24 |
| 42:19,20 58:16 | 150:17 152:13 | 174:17,20,21,22 | 61:7 |
| 97:23 100:1 | 179:7 187:10 | 175:3,15 | representing 3:2 |
| 123:16,22 124:2 | 188:6 189:2,8 | report 9:8,9,20 | 3:19 |
| 124:15 139:5 | 205:22,22 214:5 | 11:3 14:10 15:3 | request 21:5 96:21 |
| 181:8 222:2 223:2 | 220:20 222:6,20 | 25:15,17 34:9 | 156:24 275:21 |
| 223:3 226:14,15 | 225:6 226:3,7,23 | 64:6 73:2 88:10 | requested 20:3 |
| 277:13 | 227:24 229:8 | 89:8,9 92:18 | 21:6 83:4 151:15 |
| repelled 31:10 | 230:1 242:14 | 93:14,15 118:14 | 160:13 229:19 |
| 39:16 58:24 172:4 | 243:20 246:21 | 133:21 143:24 | 258:16 |
| 194:2 222:1 | 249:9,12 253:9 | 147:5,11,13 | require 58:23 |
| 231:24 232:1,1 | 255:11 256:16 | 150:11 153:18 | 122:4,16 |
| repellency 157:10 | 257:17,22 259:17 | 162:12 173:15 | required 149:4 |
| 162:9 163:3,4 | 259:19 261:7 | 178:21 187:8,18 | requirements |
| | | 189:13 190:16 | 32:24 |

[rescinded - room]

| | | | |
|---------------------------|---------------------------|----------------------|-------------------------|
| rescinded 168:12 | retractions 168:14 | 84:16 86:12 89:1 | road 4:20 |
| research 20:14 | 168:16 | 89:19,22 90:9 | roam 192:14 |
| 26:7 38:9 77:5 | returned 24:11 | 94:2,11 95:22 | robbed 18:10 |
| 80:18 116:9 | reversed 74:15 | 97:17,18,21 | robert 2:14 3:22 |
| researchers 80:16 | review 8:24 27:3 | 103:16,19 109:24 | rock 149:12,12 |
| reserve 277:21 | 35:1,10 118:18,20 | 110:24 111:2,7,9 | 263:15 |
| residence 174:16 | 119:2 147:5 159:6 | 113:18 114:1,5 | rodent 21:16 |
| 243:19 246:1 | 164:18 167:11 | 120:3 121:2 | 105:1,10 154:4 |
| residential 4:23 | 173:9 178:14 | 124:11,21 125:3 | 171:22,22 172:20 |
| residents 17:22 | 184:23 186:15,20 | 126:7 129:9,11 | 174:10 220:9,11 |
| resolved 20:23 | 210:1,3 237:17 | 130:6,20,22 131:9 | rodentologist |
| resources 183:19 | 251:23 | 132:7,10,16 | 16:10,11 |
| respect 14:14,16 | reviewed 10:19 | 133:19 135:4,22 | rodentology 17:6 |
| 255:19 276:19 | 26:3,11,12 27:14 | 136:1,4,5,6,7,18 | 17:8 |
| respond 40:19 | 27:15,21,22 28:8 | 139:7,11 141:2,3 | rodents 11:22 |
| 41:1,9 | 28:11 29:1 35:13 | 141:13 142:23 | 16:12,19 21:11,22 |
| responded 93:2 | 36:13 37:24,24 | 147:6 153:18,19 | 26:7 45:13 68:23 |
| 96:12,15 103:21 | 41:11,12 43:2 | 160:15 163:10 | 104:24 123:10,23 |
| responding 103:23 | 73:11 159:7 163:1 | 169:24 170:23 | 126:6 127:5 151:3 |
| response 38:24 | 166:22 167:2,7,9 | 171:8 181:24 | 157:11 164:3 |
| 59:22 60:20 | 167:13 173:15 | 192:3 193:20,21 | 167:23 169:22 |
| 169:17 195:6 | 176:3 184:19 | 194:3 196:11 | 171:20 172:2,8 |
| 221:2 | 200:1 209:17,22 | 199:24 201:10 | 182:2 187:11 |
| responses 77:8 | 210:6,8 211:9 | 206:21 208:3 | 276:24 277:13 |
| 79:8 197:19 | 277:5,12 | 211:17,22 215:19 | room 3:15 68:11 |
| responsible 17:19 | reviewers 184:20 | 216:12 218:16 | 72:6 80:16 82:5 |
| 19:3 156:7 | reviewing 27:5 | 221:16 223:7,14 | 84:19 86:3 105:11 |
| rest 112:22 155:8 | 32:9 42:22 119:12 | 224:2,3,4,5 228:12 | 105:22 108:20 |
| 179:6 | 209:17 | 231:10 232:19 | 112:2,22 114:1,9 |
| result 92:8 116:10 | reviews 251:5,19 | 234:12 237:6 | 124:21,23 132:22 |
| 189:16 260:1 | revisiting 169:14 | 238:6 248:7 | 134:3,10,11,13 |
| 266:17 | richard 49:2,5 | 252:20 261:11 | 135:14,16,17 |
| results 9:2 10:15 | rid 81:15 168:5 | 264:11 267:19 | 136:16,17 137:11 |
| 24:9,11 33:21 | right 6:24 12:15 | 268:4,10 271:18 | 137:11 139:10 |
| 53:24 55:9 57:15 | 17:21 21:1 27:11 | 271:21 272:15 | 140:24 141:24 |
| 67:1 77:3,14 | 30:19 31:13 32:1 | roach 127:3 | 142:8 149:13,15 |
| 78:12,16 80:2,5 | 32:4 34:19 35:24 | roaches 13:18 | 152:8,11 153:14 |
| 167:12 171:13 | 36:1 37:9 41:6 | 22:13 23:10 | 154:4,7,11,16 |
| 180:21 182:1 | 48:11 57:21 61:17 | 126:12,13,18 | 155:2,6,15 165:9 |
| 188:16 211:11,12 | 63:5,19 65:1,11,13 | 128:6,22 129:15 | 176:19,22,23 |
| 228:20 276:18 | 73:14 75:9 84:11 | 199:5 | 178:24 181:3 |

[room - section]

| | | | |
|--------------------------|--------------------------|--------------------------|---------------------------|
| 182:22 183:6 | 210:19 221:24 | says 30:8 36:2 | 240:17 241:2,6 |
| 188:7,12 193:17 | 246:15 | 63:2,19,23 64:10 | 242:17 254:6 |
| 208:7 213:9,17,18 | running 108:17 | 67:11,14 93:20 | scientists 28:5 |
| 213:19,20,23 | 197:23 210:13 | 106:23 115:17 | 241:12 |
| 214:1,6 216:9 | 219:8 234:21 | 132:1 133:11,12 | scratch 101:6 |
| 221:10,12 234:6 | runs 60:3 | 134:4 140:23 | screwed 175:13 |
| 243:7,10,16 | s | 144:20 146:18,22 | scrupulous 241:6 |
| 244:24 245:22,23 | s 4:20,21,21,21 | 148:22 155:1 | 241:11 |
| 246:4 249:14 | 19:5,5 279:7 | 157:12 163:2 | scurrying 108:19 |
| 255:10 262:1,11 | safe 213:21 | 167:21 172:3,16 | seal 106:20,21 |
| 263:6,9 264:18,24 | saith 277:23 | 180:22 196:18 | sealed 67:23 |
| 265:4,21 266:1,10 | salaried 18:17 | 202:22 214:5 | 106:11,17 120:17 |
| 266:12,16,19,22 | sales 18:23 19:16 | 218:1 219:17 | 128:21 129:3 |
| 267:8 268:7,8,12 | salts 24:7 | 233:3 236:18 | 138:1 |
| 274:13 | salvage 242:11 | 248:5 249:11 | search 160:9 |
| rooms 105:22 | sam 200:2 234:22 | 251:14 275:5 | season 90:6 |
| 114:3 154:9 | 240:6,10 241:11 | scale 36:17 37:1 | seasonality 208:22 |
| 214:10 245:19 | sample 26:18 37:4 | 181:13 246:10 | 209:8 |
| 248:5 260:12,13 | 175:4,11,14 | 253:2,10,16 | seats 32:3 |
| 261:4 271:11,11 | 211:16 227:9 | scary 79:7 | second 38:24 41:7 |
| 271:14 | sandra 9:3 118:21 | scattered 108:12 | 43:5,10,17,18,22 |
| rosencrantz 212:9 | 131:12 132:1 | scenario 125:1 | 44:16 46:12 49:23 |
| rotates 23:1 | sat 5:16 104:1,18 | scent 192:15 | 60:3,6,10,11 61:11 |
| roughly 179:4 | satisfaction | 213:19 | 63:7,9 66:19,23 |
| 266:5,6 | 119:17 122:12 | schedule 217:18 | 67:14 73:1,8,21 |
| round 212:5 | satisfied 120:20 | schuman 4:20 | 74:6 96:9 107:4 |
| rounds 212:5 | 121:10 | science 22:1 25:9 | 122:11 153:20 |
| routine 154:3 | save 132:11 280:7 | 35:18 92:14 | 154:23 162:23 |
| row 179:20 180:1 | saw 32:13,16 | 100:12,18 103:16 | 167:21 180:1,22 |
| 180:2,3,6,8,23 | 86:16 103:7,8 | 103:18 106:10 | 185:5,8 196:15 |
| 181:1,24 182:3 | 175:11 179:20,21 | 156:5 168:4 | 270:19 |
| 196:15 | 180:5 203:24 | 169:10 | seconds 171:2 |
| row's 179:24 | 211:19 218:13 | scientific 49:16 | 270:17,18,20 |
| rowe 171:24 | 260:11 269:17,18 | 92:9 121:6,18 | secretary 89:4 |
| rows 276:9 | saying 44:18,19 | 122:4,17 159:4 | section 25:16 |
| royalties 18:22 | 46:23 64:1 91:2 | 211:1 251:12 | 35:21 38:5 67:11 |
| 19:15 | 95:16 105:13 | scientifically | 74:3 75:11,24 |
| rules 6:10 234:19 | 121:17 135:2 | 13:21 251:19 | 118:15 147:16,19 |
| run 22:2 23:23 | 157:9 170:19 | scientist 98:5 | 147:23 150:14 |
| 39:7 50:2 90:13 | 186:16 198:5 | 104:15 163:21 | 252:16,17,18 |
| 96:20 104:22 | 238:1 263:2 | 214:7 228:12,13 | |

[securely - shape]

| | | | |
|-----------------------|---------------------------|---------------------------|---------------------------|
| securely 67:23 | 206:22 208:5,6,9 | 264:4 | 104:4 108:11 |
| see 15:19 24:3 | 210:19 211:6 | seizure 171:18 | 109:12 122:11 |
| 25:22 26:8 31:4 | 214:15 215:5,7 | seizures 165:6 | 172:14 213:18 |
| 36:1,9 38:7,12,18 | 216:6 233:3 | 185:20 | 214:8 225:15 |
| 49:3 50:18 55:12 | 234:12 238:7 | select 97:23 | 259:15,17,18 |
| 58:6 62:6 64:11 | 247:16 248:3,19 | selecting 213:5 | 278:18 |
| 64:15 67:14 69:17 | 248:21,23 249:1,5 | selective 116:6 | sets 134:7 259:16 |
| 73:7,17,23 74:7,14 | 249:7,11,16,21 | self 26:5 | setting 12:16 13:9 |
| 78:13,19 80:9,15 | 250:17,20 251:6 | sell 22:24 23:16 | 18:1 42:24 45:5,7 |
| 81:24 86:24 89:8 | 253:3 254:10 | selling 36:17 | 55:3,5 59:9 63:6 |
| 93:4 96:5 97:3,23 | 257:13,17 264:10 | send 26:20 | 63:12,17 65:1 |
| 98:22 104:10 | 264:13,23,24 | sensations 39:8 | 67:3 73:23 92:23 |
| 105:24 108:17,19 | 267:12 268:2 | sense 48:11 79:15 | 92:24 93:2,3,9,12 |
| 110:2,17 112:14 | 274:10,19 276:6 | 104:2,3 122:23 | 93:20,21 95:7,8 |
| 115:16 119:13,23 | seed 24:15 | 130:2 149:5 | 96:11,12,13 97:5,8 |
| 123:2,4 129:24 | seeing 17:4 101:13 | 203:12 209:10 | 98:2,13 103:22,24 |
| 131:24 132:15,19 | 104:4 113:12 | 213:1 226:13 | 194:12 254:10 |
| 132:22 133:3,13 | 171:17 185:13 | sensible 127:21 | 256:17,20 |
| 138:18 140:18 | 199:6 206:3,9 | sensory 262:14,14 | settings 53:12 |
| 141:6,9 142:3 | 247:22 266:4 | sent 26:14 160:12 | 58:10,15 62:2 |
| 144:12,16,20,22 | seeking 14:1 58:16 | 167:1 248:24 | 77:5,9,11 95:13 |
| 145:1,2,14 146:24 | seen 8:20 9:16 | sentence 26:2 36:2 | 99:9 |
| 147:3,19 148:2,10 | 30:16 33:18,20,20 | 49:24 50:4,5 51:5 | setup 136:9 |
| 148:21 150:18,23 | 34:17 35:13 41:12 | 67:14 73:6,19 | 210:16 |
| 152:4 153:3,6,7,15 | 49:7 53:8 63:2 | 74:6,9,23 92:21 | seven 205:12,22 |
| 153:22 154:13 | 64:1 67:1,7 69:3 | 96:10 104:6 | 212:14 229:8 |
| 155:14,23 156:16 | 70:19,22,24 87:4 | 126:11 167:21 | 230:2 235:17 |
| 157:4 162:2,4 | 92:7 101:19 105:4 | 172:10 180:22 | 237:15 260:11 |
| 164:9 165:8,11 | 105:21 117:7 | 181:2 182:15 | seventh 2:3 179:13 |
| 167:15,21 169:19 | 128:18 131:20,22 | sentences 50:1,2 | 179:14 229:10 |
| 169:23 174:2,14 | 140:9 151:1 153:1 | 65:16 | seventies 57:4 |
| 176:2,5 177:5 | 155:11,16,18 | separate 16:5 | severe 160:18 |
| 179:10,17 180:7 | 161:14 162:21 | separates 134:12 | sgs 34:6,7 |
| 180:10 181:5 | 165:24 166:1 | september 94:22 | shadow 71:7,9,13 |
| 182:14 183:14 | 176:7 186:6 | 94:22,23 | 71:18 72:12 |
| 185:16 188:9,10 | 195:24 199:1 | served 5:19 18:2 | 113:14 142:14 |
| 190:11 195:13 | 202:23 203:14 | services 19:24 | shadows 84:3,7,15 |
| 196:13,15,18 | 210:8 218:5 | set 29:10 30:7 | 107:1 154:3 |
| 198:2 199:24,24 | 226:22 228:19 | 42:23 43:4 60:5 | shape 114:1,3 |
| 201:2,17 202:15 | 245:3,9 248:20 | 74:13 80:2 89:21 | 243:15 |
| 203:5 206:17,19 | 251:24 263:20 | 92:22 93:7,8 | |

[sheds - solely]

| | | | |
|--------------------------|----------------------------|---------------------------|---------------------------|
| sheds 17:2 | showing 35:14 | similarly 1:7 | 176:19 202:10,14 |
| sheet 146:11 | 38:1 45:18 151:2 | simple 169:19 | 211:16 214:10 |
| 247:10,11 280:1,9 | 211:12 229:9 | 241:20 | 228:18 230:22 |
| sheets 269:13 | shown 47:2 117:19 | simplest 43:12 | 244:22 249:14 |
| 272:7 | 150:17 | simplistic 191:16 | skeptical 169:15 |
| shelter 154:5 | shows 91:20 | simply 20:23 91:2 | skills 89:10 |
| 255:10 | 157:11 191:13 | 167:9 176:9 | slide 97:22 |
| shelves 156:14 | 194:14 205:11 | single 38:16 62:2 | sliding 140:17 |
| shipped 144:13,17 | 220:19 221:4 | 84:23 115:10 | 142:16 |
| shipping 144:13 | 226:14 227:20 | 216:7 218:9,12 | slightly 56:19 |
| 144:17 184:2 | 238:2 242:14,22 | 231:21 | slip 37:13 |
| shooting 112:19 | 264:5 | sink 111:20 129:6 | slow 237:23 |
| short 72:19 118:3 | shumake 176:3 | 129:7,16 136:19 | small 16:15 36:17 |
| 135:20 136:1 | side 58:7 66:20 | 223:24 | 37:1,4 72:2 154:2 |
| 150:6 158:16 | 69:12,13 84:14 | sinks 126:20 | 154:9 166:24 |
| 161:23 162:24 | 111:19 112:19 | sir 276:21 277:3,9 | 188:12 216:9,9,9 |
| 163:4,6 167:1,4,4 | 113:16 132:22 | 277:16 | 216:24 227:8 |
| 181:22 187:1 | 134:4 135:2 136:3 | sister 101:23 | 242:18 246:11,11 |
| 210:14 211:8,10 | 153:4 175:16 | sister's 101:22 | 246:12,16 253:2 |
| 243:3 275:11 | 187:7 193:5,5 | sits 23:3 | 253:10,16 262:24 |
| shorter 207:14 | 197:14 198:7 | sitting 6:24 75:20 | smaller 56:19 57:5 |
| shorthand 1:19 | 206:12,21,21 | 136:21 | 167:16 173:20,20 |
| 13:16 278:2 | 216:23 217:7 | situated 1:7 | 174:3 176:5 |
| shortly 6:1 | 218:4,13,21 231:7 | situation 81:6 | 183:15,16 |
| shot 18:9 84:20 | 247:17 267:20 | 82:15 116:23 | smelling 214:11 |
| 270:17 | 268:15 | 153:13 192:8 | smells 79:14 |
| shotgun 84:20 | sided 247:11 | 213:18 214:9 | smooth 72:10 |
| show 36:5 70:19 | sides 81:10 204:11 | 225:15 | sneaking 120:19 |
| 130:23 131:1,5,8 | 206:14,14 210:17 | six 32:2 112:6 | snow 87:20 |
| 143:15 151:23 | 216:15,17 | 188:7,12 235:20 | social 17:24 217:1 |
| 184:6 201:23 | sign 11:8 38:11 | 245:22 273:4 | societies 156:12 |
| 205:10 222:5 | 45:15 | sixth 179:13,14 | society 26:24 27:2 |
| 225:5 226:2 | signals 193:6 | 215:10,11 | 156:7,23 157:1 |
| 229:13,15 238:17 | 194:4 | sixties 57:3 | society's 156:10 |
| 241:11 274:18 | signature 11:4 | size 26:18 56:17 | soft 68:6,18 69:20 |
| 276:3 | 278:23 | 84:17 117:8,9 | 70:19 177:4 |
| showed 20:4 21:1 | signed 11:3 280:10 | 152:11 154:15,23 | sold 19:6 32:24 |
| 157:10 168:11 | significantly 20:21 | 157:22 163:6 | 33:12 47:17 48:16 |
| 190:16,24 191:22 | 207:14 | 164:22 165:9 | sole 24:24 |
| 197:5 276:18 | signs 190:11 | 166:17 175:4,11 | solely 57:17 213:1 |
| | | 175:14,15 176:4 | 253:8 |

[solid - specify]

| | | | | |
|---|---|---|--|--|
| solid 57:1 70:15 72:9 98:21 133:22 | 261:23 267:12 273:11 | 177:14,17 178:3 179:6 180:22 | 247:14 253:3,11 255:16,20,22 | |
| solutions 3:3 | sort 22:16 98:5 | 181:3,3 182:12,22 | 259:11 272:22 | |
| somebody 24:24 35:19 66:4 76:15 99:1,17 123:6 142:7 172:11 216:13 | 121:5,18 122:4,17 227:24 260:7 | 183:5,5,10 184:8 185:7,14 191:1,8 191:20 193:24 194:17 202:21 205:19 208:5,6 217:4,5 223:4 225:20 226:9 230:9,17 231:2 244:18 253:21 255:5 263:2,7,13 263:23 264:5,7 | 273:1 275:2 speak 7:11 speaker 54:1 56:20 84:18,23 109:16,21 154:11 264:1 speakers 51:24 52:5 53:20 54:4,6 54:10,10,12 55:20 56:17 speaks 238:9 special 120:8 156:23 specialized 121:6 121:19 122:5,18 specialty 210:7 species 17:3 20:2 45:20,22 46:2,2,10 77:7 201:20 202:5 203:3,6 254:10 specific 48:17 70:22 114:15 121:15 150:15 156:5 167:6 183:20 226:21 246:5,20 249:12 specifically 22:3 32:10 60:18 61:6 99:12 139:15 170:8 188:6 232:5 249:19 specifications 82:23,24 specified 227:21 244:24 278:12 specify 173:22,23 174:9 234:16 | |
| somebody's 256:10 | sorted 39:11 | | | |
| someplace 203:11 209:8 220:16 245:15 | sound 24:22 25:9 29:14 30:2,4 31:22 33:14 36:7 38:7,11,17 39:4,16 41:8 42:8 43:8,13 43:13,20,24 44:1,2 44:9,24,24 46:8,9 50:7,9,10,13 51:4 51:20 52:6 53:12 55:2,20 58:2,11,11 58:19 59:11,13,14 59:15,16 60:12,15 60:24 61:13 62:15 63:8 64:18 66:18 66:20,21 67:2 68:6,9,13,17,19 69:1,11,12,20 70:4 70:5,8,8,12 71:2,4 71:20 72:1,6,10,12 73:20 76:24 81:12 84:3,7,15 91:17 92:23,24 93:13 95:9,14,16 96:6,7 96:7,7,7,10 97:22 98:19 104:7 104:8,10 106:23 107:1,8,23 108:2 109:19 110:6 111:10 112:12 113:13,14 117:4 123:15 124:19,24 125:18 135:13 136:4,7 142:14 149:9,12,16 154:3 165:14,19 177:13 | sounds 38:12 43:5 43:9 49:17 54:7 64:10,24 67:12 79:14 117:14 127:2 149:22 202:11,11 255:10 255:13 262:11 263:16 277:1 source 42:8 105:7 119:21 130:13 143:13 180:14 184:16 205:7 240:21 269:11,14 sources 81:9,15 156:24 182:12 southern 1:2 3:12 space 59:8 96:6 106:17 135:18 136:1 137:13,16 142:17 155:14 176:4 190:10 216:22 217:11 228:1,5 247:6 259:8 spaces 173:18 174:3 176:5 179:11 183:16 | | |
| somewhat 266:12 | | | | |
| sonic 20:1 23:15 43:1,8,13,24 44:1 44:7,10,14,23 45:8 54:6 59:19 63:10 64:17,24 65:3 67:2,11 170:7 171:14 185:6 | | | | |
| soon 66:9 | | | | |
| sooner 218:6 | | | | |
| sorry 12:13 25:15 35:7 50:2 54:20 57:1 63:16 71:15 74:10 88:21 90:23 91:11 95:19 111:14,17 118:11 119:2 138:17 141:20 144:11 146:17 147:23 157:17 158:20 160:21 161:3 168:22 170:15 171:12 175:7 198:18 199:10 203:20 205:5 207:4 216:6 232:19 235:4 249:2 252:10 | | | | |

[spectrum - strongly]

| | | | |
|--|---|--|---|
| spectrum 43:24 50:13 51:4,15 61:16 96:2 201:5 | stable 152:8 153:13 | stated 13:11 63:17 140:20 196:4 201:22 256:13 | 263:11 |
| speculate 230:6 | stack 268:15 | statement 10:9 15:9,17 37:19 | steps 42:4 107:5 109:13 264:2 |
| speculating 54:22 217:12 | stair 108:3 | 68:3 120:13,23 143:6 158:8 | stereo 64:20 149:11 |
| speculation 65:24 99:21 105:14 206:17 239:21 246:8 253:19 | staircase 91:18 | 227:11,12 269:14 | stevens 16:13 |
| speeds 251:14 | stairs 71:14 91:15 107:2,5,21,22 108:5,10 109:17 109:21 245:12 | statements 35:17 167:5 | stimuli 39:12 77:8 |
| spend 196:7 | stamp 143:20 | states 1:1 145:12 148:3 202:24 203:4 253:1 | stimulus 40:15,16 40:19 |
| spent 20:14 219:1 265:3 266:9,21 | stand 50:23 | static 95:23 96:1 201:12 | stipulated 176:18 233:7 239:4 |
| spider 92:23 93:2 93:8 95:8 96:11 96:12,15,20 97:8 98:3,12 103:22 124:15,17 125:2 | standard 29:11 30:7 90:20 115:24 201:1 | stating 226:20 | stools 134:15 135:1 136:21 |
| spiders 13:18 20:5 22:13 23:10 93:1 96:21,23 123:17 123:19,23 124:2,8 127:9 128:22 199:5 201:8 | standpoint 16:7 92:9 211:1 | stations 18:9 181:5 | stop 67:23 109:18 139:9 |
| spite 245:11 | stanson 2:20 3:2 | statistically 212:17 | stopping 91:21 |
| spring 209:14 | stars 251:6 | statistician 90:13 | stops 30:3 61:16 |
| squad 252:13 | start 50:4 57:11 88:1 103:17 172:10 235:16 237:10 | statistics 26:19 | store 152:8 153:14 184:1 |
| square 90:8,11 137:9,14,20 173:19 176:9,13 176:16,21 189:6,9 189:20 217:14 227:6,7 243:14 244:4,20 245:4,20 245:23 246:6,14 246:20,24 247:15 248:6 249:12,19 249:23 250:7 | started 21:7 97:4 191:1 213:2 | stay 37:10 99:7 206:5 213:15,17 214:1 216:12,23 265:14 269:1 | stoves 136:18 |
| squirrels 20:6 | starting 73:6 74:23 134:22 140:15 141:22 153:21 203:11 210:17 | stayed 191:14 221:23 | straight 149:14 177:22 178:1 |
| | starts 61:16 74:6,9 162:8 231:14 | staying 217:7 230:23 | strange 78:23 79:11 82:7 |
| | starvation 260:1,5 262:3 | steady 59:15 60:10 60:11 61:5,12,14 | strategically 172:1 |
| | starve 245:16 | steel 70:10 | straw 154:6 |
| | starving 221:9 | steeper 177:16,18 | strayed 202:21 |
| | state 1:18,19 4:17 59:15 61:12,14 62:3 231:15,15,17 252:7,11 254:5 277:6 278:2,2 | stein 77:12 | street 1:20 2:11 3:7 |
| | | stenographically 278:7 | strength 181:17 |
| | | step 71:16 91:16 99:14 104:14 173:8 221:5,6 259:15 260:22 | stress 40:17 190:8 197:20 |
| | | | stressor 41:8 |
| | | | strong 206:10 242:13 |
| | | | stronger 10:22 |
| | | | strongly 77:11 93:2 96:12,16 |

[strongly - sworn]

| | | | |
|--------------------------|---------------------------|--------------------------|--------------------------|
| 103:22 152:7 | 97:11,13 150:15 | suggest 137:7 | 78:4 86:24 88:16 |
| 153:12 181:20 | 152:6,12,17 158:3 | 222:19 | 126:21 133:17 |
| 267:9,11 | 158:3 176:3 | suggestive 267:11 | 155:1 207:9 |
| structure 109:20 | 178:20 181:8 | suggests 143:12 | 236:19 237:20 |
| 124:21 182:20 | 182:8 186:13,18 | 220:12 | 249:3 251:16 |
| 202:8 | 186:20 197:7 | suitable 136:20 | 265:13 269:7 |
| structured 124:23 | 207:11 209:9,22 | suite 1:19 2:11 | surface 69:20 |
| structures 176:24 | 210:9,13,15 | summarize 152:14 | 72:10 107:9 |
| 243:16 | 213:11 239:6 | summarizes 76:14 | 113:13,16 147:22 |
| struggle 68:12 | 240:11 242:4 | summarizing 18:5 | 177:4 231:3 |
| 160:22 | 253:7,16,23 | 158:10 | 244:17 |
| stuck 152:1 228:6 | 255:21 264:21 | summary 8:23 9:8 | surfaced 177:3 |
| students 169:8 | 266:4 273:23 | 9:19 25:12,18 | surfaces 68:5,7,8 |
| studied 17:12 | 274:14 | 35:22 166:11 | 244:17 263:5,14 |
| studies 17:10 | studying 22:7 | summer 209:4 | 264:7 |
| 28:11 30:14 32:10 | stuff 154:19 170:7 | summing 167:13 | surmise 116:15 |
| 32:17,19 35:14 | 242:17 | sunbeam 249:14 | surplus 154:5 |
| 36:4,12,18 37:15 | stuffed 234:20 | sunrise 80:20 | surprise 196:21 |
| 38:1 41:11 42:12 | style 200:21 | sunset 80:20 | surroundings |
| 42:13 71:12 73:13 | subject 275:23 | super 160:21 | 77:10 82:7 |
| 77:4 78:13 82:3 | 276:22 | supplied 249:14 | survive 32:8 |
| 91:24 117:19 | subjected 41:7 | support 33:8 | suspected 24:2 |
| 150:18,21,22 | 116:5,14 162:16 | 44:21 45:20 46:23 | suspicious 193:18 |
| 151:22 152:3 | 162:17 | 48:8 150:16 172:5 | swap 46:2 |
| 155:24 156:8 | submit 26:13 | 172:12 227:11,11 | sway 252:4 |
| 157:3,9 158:4,5 | submitted 6:4 | 227:13,23 228:15 | swear 204:2 |
| 159:14 166:8 | 12:22 | 241:17 | sweep 59:24 60:7 |
| 168:19 181:21,22 | subsequently | supported 226:11 | 61:4,12,18 96:4 |
| 181:23 182:8 | 238:24 | 226:13 | 98:21 |
| 186:15 187:6,13 | substance 23:24 | supports 42:19 | sweeper 95:9 |
| 197:9 209:13 | substantiation | 47:7 228:12 | sweeping 62:3 |
| 210:4,19 234:5 | 47:21 | suppose 69:17 | 95:15,22 112:12 |
| 255:6 | substantive 65:18 | 70:23 | 201:3,4,12 |
| study 13:3 21:20 | success 160:14 | supposed 61:10 | sweeps 59:20 |
| 30:13 42:17,17 | 226:17 | 145:13 148:23 | switch 97:13,22 |
| 44:20 45:11 46:22 | successful 50:15 | 174:13 246:24 | switched 97:14 |
| 47:6 50:9 61:24 | sued 5:13 | supposition 240:7 | 98:12 |
| 74:2,19 75:17 | suffering 196:16 | 241:18 | switches 133:9 |
| 76:3 87:7 90:5 | sufficient 181:8 | sure 10:4 13:24 | sworn 4:9,12 |
| 92:14,18 93:20,24 | 210:24 211:3 | 14:18 16:14 40:3 | 278:4 |
| 94:1,6,11 96:8 | | 60:1 64:23 76:2 | |

[system - tested]

| | | | |
|--|---|---|--|
| system 42:10 102:11 225:20 262:14 systems 117:2 | 215:11 228:8 261:6 263:12 267:4 273:8 talked 71:10 73:10 talking 31:12 34:23 66:22 107:1 108:3 120:3 124:18 137:16,18 145:20 164:17,24 166:9 170:7 222:18 224:19 228:7 265:7 talks 162:9 targeted 36:8 targeting 22:3 taught 16:3 17:6 169:7 teach 169:8 technical 121:6,18 122:4,17 technically 98:15 technology 38:1 150:23 151:2 television 102:18 142:3 tell 6:14 20:7 98:10 162:15 166:19 170:6 206:9 210:12 236:11 263:9 273:24 telling 75:5 temporarily 157:11 temporary 157:13 ten 115:7 168:21 181:16 190:10,10 211:16,18,20,21 212:3,15 216:8,10 217:13 231:20 235:16,21 239:14 | tend 22:9 32:4 64:15 69:19,21 98:7 112:6 tended 213:16 tending 18:8 tends 149:15 241:10 tenth 69:14 73:12 tenths 255:4 term 163:4,6 209:4 211:8 terminology 52:4 terms 14:7 17:21 25:6 43:12 54:7 75:1 130:12 174:6 183:14,15 194:20 197:10,19 208:20 271:5 terry 25:24 test 9:2 11:21 12:1 13:7 20:3,7 26:6 26:17 29:11 35:20 39:23 40:1 45:12 46:11 57:15 67:1 67:6 74:6,10,10 76:23,24 77:18 78:6 81:6,7,24 82:17,23 86:7 90:11,14,21,21 92:24 98:3 104:4 110:22,23 113:22 114:19 116:22,23 131:23 153:22,24 155:10 159:3 161:24 163:6 165:18 167:11,12 167:12,19 171:13 172:19 174:7 175:12 188:7,9,23 190:20 191:7,15 191:16,18,19,22 | 192:5,5,18 193:7 194:11 195:15 196:3 198:13 199:1,3,20 200:13 200:14,14,17,22 200:23 201:21 203:3 204:14 205:18 206:8,14 206:19 208:21 209:15 210:2 211:11,12,24 213:2 214:13,16 215:10 216:7,16 219:10 220:19 221:1,11,18 222:5 222:19,20 223:23 225:5 226:2,12,14 226:22 227:6 228:8,23 229:7,12 230:1 231:9 232:11,19 233:6 234:1,11,15 235:8 235:11,22 236:11 236:14,17 237:24 239:9 240:14 241:7 249:22 250:6 253:1,3,11 254:9,10 256:15 257:1,16 258:9,11 258:22 259:4,5 260:12,13 269:3 271:7,8 tested 19:6 20:1,7 24:8 25:5 33:11 47:1,18 50:16 62:21 67:5 71:4 77:7,14 113:18 169:6 170:20 176:5 186:19 191:19 201:19 202:6 252:7,12 |
|--|---|---|--|

Case 1:15-cv-04804-WHP Document 140-9 Filed 03/09/18 Page 57 of 64

| | | | |
|-------------------------|--------------------------|-----------------------------|---------------------------|
| testified 4:12 | 80:1,6,10 82:6 | theoretically 272:20 | |
| 55:23 | 93:1 96:11,15,20 | 225:16 | think 5:24 9:3 |
| testifies 132:20 | 116:3,4 117:7 | theory 270:4 | 17:7,21 33:7 35:8 |
| testify 6:1 8:6 | 124:17 164:20,23 | thick 69:15 | 36:5 37:12,16 |
| 278:4 | 166:9,9,10,12,13 | thickness 255:9 | 38:5 41:23 44:17 |
| testifying 6:11 | 166:16 170:22 | thing 19:23 32:5 | 46:1 47:6 55:22 |
| testimony 105:17 | 174:1,15 185:4 | 33:10 64:19 70:7 | 55:23 65:19 66:3 |
| 134:9 241:14 | 187:9,23 188:16 | 76:9,17 81:7,12 | 70:15 71:1,4 |
| 278:9 | 190:9,10 192:4 | 91:20 94:20 96:24 | 89:16 90:6 113:5 |
| testing 10:15 | 197:5 198:11 | 109:17 114:11 | 120:6 121:24 |
| 16:21 23:18 24:10 | 199:23 203:9 | 125:21 127:18 | 125:9 127:17 |
| 25:3,9 32:24 47:9 | 207:18,20 210:5 | 130:20 141:18 | 130:3,23 133:18 |
| 53:24 54:8 69:3,5 | 210:14 211:7 | 168:18 170:2,10 | 137:15 141:20 |
| 69:8 70:19 76:21 | 213:8 220:23 | 171:17 175:13 | 146:16 149:8,20 |
| 77:11,20,24 78:8 | 222:11 225:1,15 | 180:16 191:20 | 155:11 157:18 |
| 80:22 81:23 93:7 | 228:4 229:8,14 | 199:13 204:14 | 170:1 171:7 184:4 |
| 97:7 98:5,11 | 230:3 234:21 | 205:18 220:21 | 187:18 189:19 |
| 103:19 155:14 | 240:12 253:9 | 224:7 226:15 | 191:24 193:16 |
| 173:18 174:3 | 254:7,13,14,16,17 | 231:12 239:4,8,9 | 194:19 195:11 |
| 175:4 176:4 | 254:22 262:12 | 240:17 245:13 | 198:20 199:8 |
| 187:22 188:24 | 269:13 271:4 | 270:16 | 200:18 202:1 |
| 191:7 196:13 | 276:7,14,18 277:4 | things 8:1 13:2 | 203:2,13 220:3 |
| 204:14 205:13,14 | 277:11 | 17:24 18:2,10 | 222:17 235:13 |
| 205:16,19,24 | text 94:1,14 | 22:24 24:19 25:10 | 236:22 237:23 |
| 207:10 209:5 | 115:12 | 28:23 29:24 32:8 | 247:13 260:4 |
| 210:7 235:6,7,17 | textured 177:4 | 36:13,17,20 51:2 | 269:10,11 272:6 |
| 235:21,24 237:11 | thank 4:7 5:3 8:5 | 51:20 52:5 61:20 | 272:23,24 |
| 255:1 256:2 260:8 | 9:7,11 10:8 11:9 | 66:10 68:7 78:18 | thinking 100:5 |
| 263:20 264:4 | 14:9 18:6 44:17 | 78:19 89:14 100:4 | 175:9 |
| tests 11:16,17 | 51:11 99:11 | 100:17 103:6 | third 49:1 74:9,22 |
| 12:22,23 13:5 | 117:21 137:2 | 104:3 106:17 | 92:21 107:5 144:5 |
| 21:1 23:23 28:7 | 161:5 172:14 | 113:22 117:14 | 153:10 180:2 |
| 30:3 32:13 33:3,4 | 178:8 188:21 | 128:18 134:7 | 209:23 210:10 |
| 33:6,17,18,22 | 189:10 198:19 | 136:22 147:21 | 215:9 270:19,19 |
| 34:12,14,15,17 | 275:22 277:16,18 | 165:1 166:15 | thoroughly 70:11 |
| 37:1 41:14,18,22 | thankfully 126:17 | 168:17 170:5,20 | 94:16 259:13 |
| 42:1 43:3 45:4,18 | thanks 15:13 | 179:1,5,15 183:23 | thought 20:8 30:9 |
| 47:13 49:16 50:12 | 22:19 51:1 58:3 | 188:12 191:9 | 220:9 |
| 62:12,20 69:9 | 77:17 113:5 143:3 | 206:18 211:8,9 | thoughts 173:13 |
| 70:22 77:2,15 | 146:14 163:18 | 224:23 257:10 | 174:7 |
| 78:11 79:17,20 | 254:23 | 258:23 263:11 | |

[thousand - trying]

| | | | |
|--------------------------|----------------------------|---------------------------|---------------------------|
| thousand 66:22 | 255:9 | tracking 20:17 | transposed 75:1 |
| thousands 115:23 | title 36:1 115:13 | tracks 171:22 | trapped 87:8 |
| 166:5 | 160:11 | trade 249:15 | 88:15,17 89:20 |
| three 59:17 61:13 | titled 25:12 92:18 | trained 16:3 21:15 | 108:7 |
| 69:15 101:5 108:3 | 115:12 150:15 | training 120:9 | trapping 17:1 |
| 111:11 119:3 | 250:21 | trans 168:24 | traps 87:10 91:1 |
| 137:6,7,15 144:20 | today 3:3,20 5:10 | transcribing 7:8 | 91:15,17 107:4,7 |
| 160:20 174:8 | 6:10,14,18,24 7:7 | transcript 8:3 | 108:10 |
| 179:2,6 180:17,18 | 8:6 13:17 169:2 | 119:12 120:8 | trash 224:8 |
| 187:9,24 189:6,19 | 275:15 | 121:2,21 122:7,20 | travel 60:10 67:15 |
| 204:3 206:20 | today's 7:3 | 130:23 131:1,6,12 | 68:20 69:1 117:5 |
| 235:17 255:4,9 | token 7:19 | 132:5,9,13 138:8 | 244:18 |
| 270:18 272:4,21 | told 35:5 120:1 | 139:13 278:6 | travels 68:17 |
| 273:20,22 274:17 | 176:9 246:19,23 | 280:4 | tray 154:8,12 |
| threw 188:23 | tolerate 38:6,12 | transcripts 118:18 | treated 264:17 |
| throw 79:11 | tolerated 217:15 | 118:20 119:3,20 | 265:12,20 271:12 |
| 127:19 188:22 | 254:9 | transfer 71:2 | 272:1 273:21 |
| ties 20:4 | tolerating 40:20 | 253:21 | treatment 207:14 |
| tightly 128:21 | tomatoes 86:20 | transferable 51:13 | 209:24 210:11 |
| till 90:6 191:17 | 87:2 94:20 | 57:16 | tremendous 106:9 |
| time 3:4,14 10:6 | tooth 16:16 | transferred 156:3 | tremendously |
| 15:2 47:18 57:3 | top 28:20 38:4 | translatable 62:1 | 176:10 207:19 |
| 70:14 80:3 101:4 | 59:21 71:14 89:11 | transmitted 11:7 | trial 6:2 |
| 108:9 125:21 | 107:2 111:20 | transonic 16:22 | tried 97:5 116:22 |
| 132:11 139:12,19 | 130:16 132:1,2 | 21:21 23:12,17 | 119:20 159:23 |
| 155:9 160:17 | 180:12 224:12 | 31:12 32:17 38:11 | triplet 259:20,21 |
| 162:13 168:6 | 269:5 272:14 | 42:18,23 44:20,20 | trouble 216:11 |
| 173:8 178:17 | topic 12:7,8 17:5,7 | 47:6,15 48:15 | true 62:17 85:16 |
| 180:2 182:24 | 224:24 | 50:8,16 51:13,24 | 155:23 172:13,16 |
| 183:12 189:5 | topics 265:14 | 52:23 53:11,14,18 | 223:8 240:3 263:1 |
| 196:7 203:10 | tore 272:4,20 | 53:24 55:9,12,22 | 268:9 276:19 |
| 208:19,19 210:20 | toronto 34:24,24 | 56:4,18,19,24 57:9 | 277:1 278:9 280:6 |
| 216:11 221:23 | total 215:20 238:3 | 57:13,16 58:8 | truth 6:14 278:4 |
| 230:15 263:12 | 239:14 271:2 | 61:24 62:2,11,14 | truthfully 8:6 |
| 270:9 275:22 | 273:6,12,21 | 63:11 73:3 74:2 | try 6:21 7:11,17 |
| 278:12 | 274:14,16 | 74:11 76:3 86:7 | 7:24 46:16 109:18 |
| timeframe 205:12 | totally 208:21 | 92:18 93:7 94:5 | 151:24 160:15 |
| times 5:22 69:15 | tough 7:15 32:23 | 94:11 97:11 106:4 | 195:12 199:9 |
| 108:13 181:16,18 | townhouse 111:14 | 106:14 109:12 | 225:24 242:17 |
| 205:6 209:12 | toxics 162:1 | 110:22 208:10 | trying 17:20 37:10 |
| 212:3,11 227:16 | | 253:7,22 | 39:24 65:19 67:4 |

[trying - understood]

| | | | |
|--------------------------|--------------------------|---------------------------|--------------------------|
| 79:12 123:16 | 111:11 112:2 | 142:4 147:7 162:7 | 170:14 171:14 |
| 134:5 159:6 | 120:19 140:23 | 162:10 186:8 | 172:1 175:18 |
| 217:16 218:3 | 141:24 145:4 | 206:24 234:13 | 176:11 179:2 |
| 228:7 240:13 | 148:20 149:21 | ultrasonic 19:8,16 | 180:13 185:6,9,18 |
| 241:22 242:10,11 | 156:15 160:17 | 20:2 23:16 24:22 | 191:8,11 192:18 |
| 256:9 257:9 | 161:1 171:2 174:8 | 29:5 31:22 35:14 | 194:10,22 195:7 |
| 268:17 | 174:20,21 185:23 | 38:1,6 43:13 44:2 | 230:20 231:3 |
| tube 231:23 232:7 | 188:10,11,21,22 | 44:13,16,24 47:8 | 255:17 256:14 |
| tunnel 231:1,7 | 189:12 190:15 | 50:24 54:1 59:18 | ultrasounds 73:22 |
| 233:4,12 234:1,2 | 192:4,17 193:10 | 59:18 63:23 64:11 | unable 165:17 |
| turn 48:22 72:23 | 199:22 207:20 | 67:11 68:12 69:9 | unavoidable |
| 81:11 93:16 | 208:11,12 210:16 | 74:13 82:19 84:22 | 106:19 |
| 102:16 118:15 | 211:2,5,21 212:5 | 84:23 85:1,15,22 | unbelievable |
| 140:13 144:24 | 215:3 220:23 | 86:4 109:6 127:2 | 115:8 |
| 149:11 150:10 | 221:6 229:4,15 | 129:12 144:21 | uncertain 13:23 |
| 192:17 194:13 | 230:10 242:3 | 145:9 149:9,16 | 64:19 |
| 196:8 204:12,24 | 259:16 260:13 | 150:17 152:13 | unconfined 90:20 |
| 206:4,18 208:4,5 | 269:21 272:4 | 164:23 172:20 | 91:7 |
| 247:7 251:4 | 273:21 276:9 | 173:4 176:15 | underneath 31:16 |
| 252:15 | type 75:21 121:6 | 182:9 187:10 | 85:7 108:17,18 |
| turned 73:20 | 121:19 159:17 | 193:6 194:4 | 129:6,7,15 136:23 |
| 93:20,21 94:6 | 167:16 182:9 | 200:22 249:13 | understand 5:11 |
| 168:21 191:10 | typed 159:23 | 250:21 251:1 | 5:14 6:11,13,20,23 |
| 192:1 193:13 | types 115:21 | 256:12 262:11 | 7:4,6 13:20,24 |
| 194:11 205:22 | 116:17 149:22 | 263:2,12 277:1,6 | 39:22 64:13 66:10 |
| 208:13 213:16 | typewriting 278:8 | ultrasonics 164:2 | 98:9 102:10 |
| turning 221:3 | typical 127:12,22 | 170:9,21,23 | 109:22 112:21 |
| tv 102:3,5,6,8,16 | typically 31:16 | ultrasound 25:2,7 | 113:24 114:8,13 |
| 102:17 | 82:19,20 128:12 | 26:7 33:4 36:6 | 121:13,16 143:3 |
| twice 215:14 | 129:7 260:22 | 39:15 40:8,8 | 149:9 154:15 |
| 228:18 | typographical | 41:12 42:6 43:16 | 160:4 169:17 |
| twitch 39:9 | 94:8 | 45:7,16,19 46:13 | 178:4,6 226:18 |
| two 8:10 9:23 | u | 46:20 50:14 54:5 | 249:18 257:3,5 |
| 20:14 32:16 35:16 | u 4:20 19:5 255:7 | 54:8,10,12 63:10 | 274:22 275:1 |
| 38:16 39:5 40:18 | u.s. 3:11 | 67:15 70:16,20 | understanding |
| 42:12 51:24 52:4 | ubiquitous 108:21 | 71:3,13 74:13 | 119:11 126:19 |
| 52:13 53:22 54:4 | uh 8:1 26:1 53:1 | 116:16,20 117:2 | 134:8 195:8 254:8 |
| 55:7,24 56:4 | 67:13,17 73:24 | 117:13,15,16 | 280:9 |
| 59:17 69:15 75:1 | 94:19 118:19 | 151:6 154:10 | understood 12:5 |
| 81:10 88:17 | 123:5 125:11 | 163:20 164:19,20 | 70:21 108:8 |
| 105:22 107:1 | 132:3 138:22 | 165:1,2,4,16 170:4 | 124:20 135:15 |

[understood - wait]

| | | | |
|---|--|---|--|
| 143:2 161:3 180:5 unequivocally 165:16 211:12 unexpected 100:3 unfamiliar 77:10 204:6 unfortunately 19:4 207:19 unidirectional 149:9 uniform 190:24 206:3 unintentional 37:20 unit 51:13 52:8,9 52:24 53:20 54:15 58:8 66:6 67:20 73:3,20 74:13 81:12 84:8,12 88:13,14,15,18,19 88:22 89:20 90:24 91:1,13 92:7,22 93:7 104:7 106:14 107:1 108:4 110:3 110:19 132:21,22 133:22 134:18 135:15 148:4 177:19 191:11 208:11,12 212:14 221:3 unit's 93:3 96:13 united 1:1 202:24 203:4 units 32:22 33:4 50:9 54:1 57:5 110:11 119:22 120:1 132:18 137:4,15 145:2,16 146:23 174:13 179:3 180:11,17 183:15 190:21,21 | 247:6,14 248:4 256:3,5,6,10 262:16 263:23 universities 26:5 university 5:1 156:17 160:13 210:13 unnatural 76:20 77:19 78:8,20 79:17,21 81:21 unprotected 178:7 unreliable 188:17 189:17 249:24 unsure 167:6 untreated 207:23 214:2 264:17,22 265:8,9,16,19 266:8,16 267:6 268:6,10,12 271:20,24 272:3 unturned 20:24 unusual 79:5 260:23 261:9,11 upper 124:8 upr 50:23 120:14 147:9,16,24 191:21 uprs 50:11,14 253:2 upset 59:5 urban 20:11 urine 213:12 use 24:14 27:5 32:23 35:3 40:23 43:8,14,16 44:20 52:11 53:12 56:24 58:15 59:7 65:16 76:20,22 82:19 83:9 90:12 92:24 96:10 99:18 102:6 102:9 120:15 | 122:17 134:23 137:3,8 146:12 151:5 152:11 153:17 176:14 195:5 254:24 255:20 256:18,19 uses 54:12 153:11 214:4 usually 124:8 126:19 uw 16:13 25:9 v valid 13:10 28:14 36:19 55:9 77:3 77:13 78:12,15 80:2,5 82:16 166:19 192:18 193:9 197:7 200:14 208:14 214:12 240:14 251:19 266:24 validity 11:17,17 27:14 82:6 van 1:11 5:7 vanish 206:19 variables 204:15 variation 65:17 116:12 202:14 208:23 209:8 238:21,22 various 20:1 25:4 49:18 119:16 201:19 204:18 varying 195:5 verbally 8:1 verified 54:21 veritext 3:2 versus 3:9 8:24 9:1 9:21 12:23 45:7 78:9 87:1 90:18 95:14,14 177:3,4 | 194:22 205:12 207:20 210:2 218:1 271:24 vertebrate 16:4 77:15 vetted 28:19 vibrating 163:23 vibration 64:21 vicious 190:5 video 270:15,20,21 videoed 270:23 videographer 2:20 3:1 72:17,20 118:1,4 150:4,7 158:14,17 186:22 187:2 243:1,4 275:9,12 277:19 videos 269:16 videotaped 7:3 view 178:19 viewpoint 154:1 violate 99:2,17 violation 99:3,18 219:16 virtually 245:22 visual 218:20 vole 16:15 volume 28:7 58:11 58:19 71:20 73:22 92:22 93:8,10 181:19 volunteer 209:19 vs 1:9 w w 4:20 wait 60:24 66:4 88:13 94:19 135:21,21 138:13 186:11 188:7 193:1 235:19 267:20 |
|---|--|---|--|

[waiting - wisconsin]

| | | | |
|---------------------------|--------------------------|---------------------------|---------------------------|
| waiting 60:20 | wants 30:8 236:21 | 205:17 215:12 | whitford 1:15 3:14 |
| wall 71:21,23 | 237:17 | 237:8 240:14 | 4:10,15,19 8:11,11 |
| 107:8 111:21,21 | warehouse 152:8 | 242:12 | 8:14,18 40:24 |
| 124:16 125:2,17 | 153:13 | weaker 10:24 | 52:13,16,20 118:7 |
| 125:18 126:8 | warchouses | web 26:6 28:17 | 131:11,14,18 |
| 131:5 132:21 | 182:10 | website 53:3 | 140:2 148:13,16 |
| 133:3,4 134:11 | warning 117:2 | 250:18 | 150:10 152:19 |
| 135:6 136:19 | 250:21 251:1 | week 87:17 191:14 | 158:20 161:9 |
| 138:11,20 139:7 | warranted 26:17 | 207:18,20 211:15 | 164:5 172:23 |
| 141:17 177:23 | wasting 139:18 | 213:10,13,23 | 175:21 184:11 |
| 219:5 | watched 87:21 | 230:9 | 187:5,8 195:18,22 |
| walled 107:3 | 104:19 269:16 | weekends 106:5 | 198:12 243:7 |
| walls 30:1 31:3,16 | watching 212:9 | weeks 160:20 | 248:13 250:11 |
| 67:15 108:19 | water 32:6 115:6 | 174:9,18 182:18 | 275:22 276:3,4 |
| 124:24 136:24 | 154:6 206:14 | 207:20 | 279:3,9,10,11,12 |
| 177:4 223:7 | 213:19 245:15 | weighted 154:8 | 279:13,14,15,16 |
| 225:18 256:14 | wave 70:12 127:2 | weiss 2:15 3:24,24 | 279:17,18,19,20 |
| 259:12 262:20 | wavelength 43:18 | 4:4,7 198:16,20 | 279:21,22,23,24 |
| 263:5,13 264:5 | 44:4 60:13 | 199:10 | 280:14 |
| want 6:10 40:4 | waves 31:22 43:18 | welcome 151:7 | whoop 168:22 |
| 41:3 46:4 48:4 | 72:6 129:12 136:4 | 161:15 | whp 1:10 |
| 71:16 79:2 80:16 | 136:7 177:14 | went 38:22 43:2 | wide 84:14 |
| 90:16 111:11 | 256:12 | 87:17,21 89:17 | wife 88:1 102:5 |
| 112:24 113:3,3 | way 20:16 39:5 | 98:4 105:6 122:10 | 160:24 243:24 |
| 117:23 120:23 | 51:18 69:22 76:9 | 159:19,22 207:18 | wild 19:10 82:8,9 |
| 125:20,21 126:10 | 90:14 100:5,5,7 | 219:1 221:19 | 116:6,13 203:12 |
| 146:1,6 147:21 | 109:20 110:1 | 270:24 | 203:19,19,22 |
| 150:20 151:22 | 114:22 147:4 | west 1:20 2:11 3:6 | 204:1,4 208:23 |
| 168:3 172:11 | 149:3 172:10 | 25:23 | 209:3,9 |
| 184:23 185:23 | 174:12 189:10 | whatsoever | wildlife 26:24,24 |
| 196:6,7 198:16 | 202:2 211:14 | 210:20 | 156:10 183:22,22 |
| 213:7 217:3 | 214:11,11 216:8 | wheat 154:8 | 184:15 |
| 225:23 236:20 | 221:4 222:11 | whereof 278:18 | willing 46:17 |
| 257:7 263:11 | 229:1,5 231:20 | whim 28:17 | 113:14 |
| 265:14 | 239:24 251:16,20 | whistles 250:22 | wind 23:2 |
| wanted 20:7 96:9 | 261:12 263:14 | 251:1 | window 120:19 |
| 110:13 123:22 | 266:20,24 268:21 | white 115:15,20 | 134:5 138:4 |
| 137:3 146:9 | 269:20 | 115:22 116:18 | windows 136:24 |
| 158:21 190:13 | ways 39:5 82:16 | 201:24 202:2,4,17 | wisconsin 4:21 |
| 191:20 243:18 | we've 44:5 143:22 | 202:19 | 16:16 17:19,23 |
| 256:15 | 186:1,15 197:8 | | 18:8 106:5 |

[witness - zero]

| | | | |
|---|--|---|---|
| witness 3:13 4:8 4:11 5:20 11:18 27:24 29:19 31:1 34:4,7 36:23 41:24 45:3 46:4,7 47:23 49:14 51:17 52:14 54:24 56:7 62:5,19 65:8,15 66:2,16 68:15 73:13,15 76:4 77:22 79:23 80:8 81:5 83:5,19 91:4 96:19 99:6,23 103:4 105:18 107:15 110:10 114:18 120:11 122:9,22 123:12 124:6 126:16 127:16 128:2 129:2,20 130:5,7 138:14 142:12 148:6 149:24 154:21 157:6 163:15 171:1 173:2 177:10 179:4 181:11 183:9 184:14 195:3 198:9 199:14 204:9 212:8,23 215:18 216:21 217:23 218:18 219:13 220:7,15 222:9,24 224:22 225:10 226:6 227:19 230:14 232:4 233:16 236:23 237:2,6,9,19 239:12,20 240:2 241:5,15 242:8,21 243:13,23 245:8 | 246:9 251:22 253:14 256:1,23 257:21 258:4,19 260:3,18 261:2,20 262:7 278:3,3,18 279:2 witnessed 77:9 204:20 woman 106:1 wood 69:18 224:15 woods 69:19,20 word 13:17 46:1,2 64:13 65:5,12,22 66:12 74:6,10 192:22 words 65:16 73:6 135:9 153:21 210:18 work 4:24 8:2 19:21,23 20:10 21:10 23:21 24:18 32:4 36:6 48:4 68:1 73:3 114:1 117:17 120:2,14 139:5 176:20 186:17,18 209:19 209:21 227:24 241:20 245:10 257:17 worked 17:14,18 25:1 48:2 119:16 160:23 209:16 working 17:2 18:3 18:9 44:8 98:6 105:9 136:22 158:9 166:2,3 works 41:2 45:16 62:20 227:20 world 13:4,6 30:15 77:2 78:11 | 79:20 80:6,9 81:2 203:6,15 222:18 223:22 255:16,22 256:20,24 258:9 258:20,22 worry 90:2 187:21 worrying 164:15 worse 168:23 worst 213:7 worth 183:21 worthless 117:20 write 152:6 254:15 writing 74:16,24 186:14 written 153:4 158:11 169:11 173:14 178:20 wrong 20:21 44:19 130:9 199:7 225:18 wrote 15:2 37:11 147:1 152:14 173:16 x x 18:13,18 19:24 20:10 22:18,24 23:22 24:12 42:12 53:3 55:1 60:18 68:1 89:4 96:21 279:1,7 y yard 23:13,14,18 yeah 25:8 32:3 34:7 41:21 45:9 46:6 59:10 60:24 61:1 66:3 71:23 74:15 75:12,19 76:4 88:4,15,16 91:1,5 95:17 97:12 109:1,5,11 | 125:4 126:8 143:4 144:4 146:13 147:19 160:22 163:5 165:5 186:13 189:15 198:18 208:1 209:11 217:14 224:4,10 231:2 241:16,24 252:17 259:20 266:13 272:10 year 31:5 38:10 73:7,19,21 75:7,8 86:9,9,10 87:5,8,9 87:13,13 88:3,7,21 115:3 169:13,13 208:10,17,24 209:12 years 16:6,18 17:1 18:15,16 19:7 20:14 26:22 75:1 77:4 87:23 90:6 90:18 91:24 92:3 94:6 97:15,16 101:11 102:4 103:7 104:20 116:5,9,10 156:11 168:13,21 169:11 183:21 191:23 249:14 252:8,12 yep 31:21 115:14 yitzhak 2:6 yitzchak 3:18 5:5 york 1:2 2:4 3:12 z zero 86:17 88:15 90:4,12 92:7 212:15 272:2 |
|---|--|---|---|

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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